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CIS

FEDERAL REGULATION

HEARING
BEFORE THE
SUBCOMMITTEE ON ENERGY, NUCLEAR PROLIFERATION, AND GOVERNMENT PROCESSES
OF THE
COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE
NINETY-SEVENTH CONGRESS
FIRST SESSION

Part 4

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FEDERAL REGULATION

FRIDAY, DECEMBER 4, 1981

U.S. SENATE,
SUBCOMMITTEE ON ENERGY, NUCLEAR
PROLIFERATION, AND GOVERNMENT PROCESSES,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, D.C.

The subcommittee met, at 9:30 a.m., in room 3302, Dirksen Senate Office Building, Senator Charles H. Percy (chairman of the subcommittee) presiding.

Present: Senator Percy.

OPENING STATEMENT OF SENATOR PERCY

Senator PERCY. We certainly welcome you this morning. I am sorry for being a few minutes tardy.

This hearing is the fourth in a series of hearings the subcommittee has held this year on the effect of Federal regulation. The first three of these hearings were held not in Washington, but in Rockford, Quincy, and Peoria, Ill. We heard testimony from individuals, small businesses, State and local government officials, labor unions, and public interest groups.

Those hearings provided a fresh perspective on the pressing need for regulatory reform. There is nothing like talking to someone who actually has to fill out the forms, meet the inspectors on the floor of his or her plant, or negotiate with agency officials to settle a case. That person knows from firsthand experience what the effects actually are.

In our hearings, we discovered that, with some exceptions, of course, there is a strong public support for many of the goals of regulation. A clean environment, a safe and healthy workplace, equal access to employment opportunities—these are widely perceived as important goals and I share them. But at the same time, we found serious and widespread concern about the ways these goals are being implemented, and in particular, about enforcement practices.

In discussing regulatory reform in Washington, it is possible to become absorbed by the subtleties of the procedures and mechanisms of administrative law. Sometimes the urgency of the issue seems to fade. But all it takes is a few minutes talking to someone whose working life is profoundly conditioned by regulation to realize again why there is such a pressing need for remedial action.

I would like to give an illustration because it happens to fit into the background of both myself and one of our witnesses today. I performed as an industrialist for 28 years. It is helpful to go through and update myself 16 years after I left the field of business as to what has happened and occurred in the meantime.

Take medium businesses and small businesses and put right to them the question of how complicated it has become dealing with the Government and what has happened since my experience.

Charles Rothchild runs a corner drugstore right across the street from the high school I had gone to in 1934 and 1935. It's called White's and it's on Winnetka Avenue in Winnetka, Ill., about half a mile from my home. As I say, right across the street from the high school. Mr. Rothchild hired students. They work in the store after school partly to help deliver prescriptions to shut-ins and other customers who need this service.

It is not a concentrated neighborhood. It is a spread-out neighborhood, all individual homes up and down the North Shore of Chicago.

If kids today are anything like kids when I was growing up, they consider themselves very lucky to have a job for a few hours after school. When I was young, I took advantage of every opportunity that came along to make a few extra dollars. It is good for them, too. Working teaches them how to be responsible and how to work for the things they want out of life.

The Department of Labor allows employers to pay high school students 85 percent of the minimum wage, and that is what White's was paying them. But what Mr. Rothchild didn't know was that to hire them he needed to get a full-time student certificate from the Department of Labor's Wage and Hour Division. He had been doing this for years, but the paperwork and the regulations change.

He doesn't have a very large legal department in a family owned drugstore. He just simply didn't realize there was the reporting and the forms he had to fill out to comply with the new regulations. Mr. Rothchild got in trouble for another reason. He was not aware that the Labor Department's Hazardous Occupations Order No. 2 prohibited employing minors between the ages of 16 and 18 to drive a car unless the driving is "occasional or incidental" to their jobs. I cannot blame him for this. After all, White's drugstore is right across the street from the high school where hundreds of students drive to and from school every day without interference from any Federal agency.

For as long as I can remember, children on Long Shore, Chicago, an affluent community, celebrate their 16th birthday by getting their driver's license that day. They drive from that day forward. They had to build all kinds of parking lots to house all the automobiles, hundreds that are driven every single day.

So it was perfectly proper and Mr. White thought it was no trouble if he asked students who regularly drive to work to drop off prescriptions for people at their homes. However, he found out about these requirements when the wage and hour inspectors came by to examine his store. Very soon after that, the Labor Department fined him $700 for allowing students to drive while making deliveries, and ordered him to pay almost $5,000 in back wages for failing to get full-time student certificates—not filling out the proper form.

He fought the charges. He was incensed by it, being penalized under some regulation he didn't know about. Instead of just warning him and saying, "Hereafter do this," they actually levied a fine against him for doing something he had been doing openly and publicly as long as he had been in business.

He paid $2,200 in legal fees, and they did reduce the fines but he still had to pay the back wages—all because he thought it would be nice to hire a few high school students to deliver prescriptions as he has always done through his business career.

Unfortunately, people back here in Washington don't realize what a small business like Mr. Rothchild has to contend with.

While a regulation may be quite reasonable, something they would be more than willing to comply with, the way it is enforced in the field can produce real frication between the Government and the people it is trying to regulate.

Now, having heard comments and complaints of this kind in Illinois, I am very much concerned that other people in Washington, here in the Congress, and also in the executive branch, should also focus greater attention on the problems in the enforcement process.

At my direction, the subcommittee staff has prepared a report on the field investigation which I am releasing today.[1]

I have just presented a copy of it to Mr. Christoper DeMuth, who is Executive Director of the Vice President's Task Force on Regulatory Relief.

Mr. DeMuth, who is taking time out of his schedule to be with us today, is well aware of these problems. As a boy, he lived in my old neighborhood and remembers many a visit to White's Drugstore. I am very impressed with his determination to do something about this.

By the time the Vice President's task force has finished its work, I expect small businesses around the Nation will start seeing some needed relief.

At today's hearings, I am calling upon national and regional staffs from our regulatory agencies to comment on what we found in our field hearings.

Before completing this report, the subcommittee staff asked for agency comments regarding every enforcement problem we heard about in Illinois.

I am pleased to say these agencies were receptive to these complaints. A number of top officials agreed that action needs to be taken to keep these abuses from happening in future cases, and I am fully confident that such action will be taken.

The staff also made an effort to solicit views from others who feel our regulatory programs are generally heading in the right direction. These days, it is not popular to rally behind Federal regulations, and I deeply respect the viewpoints of those who do.

I have a great many friends in Illinois who are strong advocates of environmental protection, safe and healthy workplaces, affirmative action, and other important goals. Basically, I am in agreement with what they want to accomplish, and the speed with which they want to accomplish it. As they read this report, I think many will agree that unfair enforcement practices could undermine public support for these goals.

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[1] Staff report by the subcommittee entitled "Enforcement of Federal Regulations," Nov. 24, 1981.

I am looking forward to these agency comments today. To make sure we build as complete a total hearing record as possible, I will ask the record be kept open for 60 days, twice as long as usual, to give everyone a full chance to study the report and comment on the issues that are raised.

Our first witness this morning Val Adamkus, regional administrator for region V, Environmental Protection Agency.

We have known each other for many years. I believe this is the first occasion I ever asked him to testify. It is a great pleasure to welcome you, Val, this morning and we look forward to your remarks.

TESTIMONY OF VALDAS ADAMKUS, REGIONAL ADMINISTRATOR FOR REGION V, ENVIRONMENTAL PROTECTION AGENCY, ACCOMPANIED BY SANDRA GARDEBRING, DIVISION DIRECTOR, REGION V

Mr. **Adamkus**. Good morning, Mr. Chairman.

I am Valdas Adamkus, administrator of EPA's Chicago Regional Office.

With me today is Sandra Gardebring, our division director in region V in Chicago.

I am pleased to appear before you today to discuss the way EPA enforces its rules and related changes that will help reduce the drag of Federal regulations upon the economy.

Congress has given broad enforcement powers to the Environmental Protection Agency under nine principal environmental statutes. They range from protecting oceans from oil discharges from offshore drilling rigs, to assuring the safe application of pesticides on corn.

A few numbers may help to put our charge in perspective. Nationally, we oversee compliance of about 45,000 air pollution sources, not including cars; 65,000 water pollution sources, including municipalities; 214,000 public drinking water supplies; an estimated 85,000 generators, transporters, treaters, storers, and disposers of hazardous waste; and we are responsible for making sure that more than 45,000 pesticide products are labeled and used correctly.

We cannot enforce all of our regulations for all of these sources ourselves, and we have never tried to. Congress wisely established a Federal-State partnership under every statute we enforce.

In many cases, this partnership takes the form of delegated programs—programs for which EPA assigns primary regulatory or enforcement authority to a State once certain minimum requirements are met.

As an example, the State of Illinois has been delegated responsibility for four major regulatory programs under three Federal statutes—the Clean Air Act, the Clean Water Act, and the Safe Drinking Water Act. In each case the delegation includes enforcement authority.

Forty-nine of the fifty States, plus the District of Columbia, Puerto Rico, and the Virgin Islands have State air pollution control programs. All States issue new source permits in attainment and nonattainment areas. In the newer PSD program, full or partial delegation has occurred in half the States. In water programs, States have been delegated the authority to handle the administration of the construction grants program, and 46 States and territories are expected to have such delegated capabilities by the end of fiscal year 1982.

In the water discharge permitting area, there are now 32 State programs, and we expect 34 States to be handling NPDES programs by the end of fiscal year 1982.

Under the Federal Insecticide, Fungicide, and Rodenticide Act, States operate their own registration and experimental use programs to complement the Federal program, and 54 States and territories have pesticide enforcement programs.

In the safe drinking water program, 49 out of the 57 States and territories have primary control over their public water supervision programs, and by the end of fiscal year 1982, we plan on 40 delegations to States for the underground injections program.

The same process is occurring with the Resource Conservation and Recovery Act [RCRA], even though the regulatory scheme is not fully implemented. Already 27 States have been granted interim authorization under our phase I RCRA regulations. Another 18 States are expected to apply for phase I interim authority during fiscal year 1982, while 7 States are expected to receive phase II interim authorization in fiscal year 1982.

In addition to the 27 States with interim authority under phase I, 27 other States and territories have entered into cooperative arrangements with EPA.

As a matter of practice, we normally defer to enforcement actions taken by State environmental agencies before proceeding with our own. We ordinarily take enforcement action in those cases where a State does not have the necessary authority—abandoned waste sites or interstate pollution problems being cases in point—where a State's action does not meet the minimum requirement of the law; or when a State asks us to take a case that they are not capable of handling.

As I am sure you are aware, EPA is decentralized, and important enforcement responsibilities lie in our regional offices.

As Regional Administrator of EPA's Chicago Region, I am charged with working with six Midwestern States to give them support in carrying out environmental programs falling under the purview of Federal legislation, including their enforcement programs.

I also direct the Federal enforcement program for these six States, under the general policy direction of the Administrator and her Enforcement Counsel.

Often, problems with enforcement start with problems in regulations. As an example, EPA's statutory authority and major programs for controlling toxic and hazardous material have been separated and categorized by environmental subject—air, land, water, and hazardous waste. In previous administrations, toxic control was based on treating these pollutants as specialized problems, often taking a particular chemical or geographical location and deciding from that experience that a fuller regulatory or statutory control program was needed.

This approach has resulted in extraordinarily complex rules and regulations and a large number of permits for various programs, often with differing criteria, depending on the media in which the suspected toxic occurs.

These approaches have generated criticism from a number of sectors, including the Congress, the GAO, and the industries affected.

Obviously the bulk of unnecessary regulations and the long delays they have created need to be reduced. This is critial if our enforcement responses to violations are to mean anything. Nobody can expect people to comply with rules they cannot understand.

I think that paragraph is the heart of the problem I have run into really.

We also have a number of particular problems relating to specific provisions of the statutes we enforce. In the hazardous waste area, we are still in the early stages of putting superfund—the Comprehensive Environmental Response Compensation and Liability Act—into place. As we do, it's vital that we focus expenditures of superfund moneys on abandoned sites where responsible parties cannot be identified, and to use enforcement levers to force responsible parties to clean up their sites when such parties can be found.

We also face a particular challenge with our enforcement posture regarding municipalities who have failed to install the sewage treatment facilities required by the Clean Water Act. Often, EPA's own grants process is the cause for delay. This is a good example of a program in which nonconfrontational approaches may lead to speedier environmental cleanup.

Another area we have to confront is problems with our own inspectors. This is a nationwide problem. Many times an inspector sent out to determine compliance with air pollution regulations is not familiar with water pollution or hazardous waste requirements—and additional visits from other inspectors result. Sometimes our inspectors don't coordinate with State inspectors, resulting in yet more visits to the source.

Many businessmen tell me that we have a chronic problem with the tone that the Federal Government often takes in dealing with people. Attorneys, engineers, and even top managers will sometimes sound officious—even if they are carrying out their duties responsibly. We can change the way that we have dealt with people in the past without losing sight of our responsibilities. We can be firm, while being fair. We can talk straight, and still get results.

Senator PERCY. I think there, if I could just comment to you, this is not unlike a problem that every single Member of Congress has. We deal with the public a great deal. Our staffs, for instance, develop professional expertise. They sometimes have a tendency to get autocratic. They know it all. They are forgetful sometimes that they must be responsive to an electorate who made it possible for them to be there. We constantly have the job reminding them the attitude of the public and the people toward bureaucracy is governed by how they are handled, how they are dealt with many times. The problems are not unlike those that you have. A tremendous amount of authority is invested in people and they sometimes get to be little dictators.

It is the job of supervisors to make absolutely certain they recognize they are public servants in the end. They are not military police out there. They are endowed with a lot of power, but the attitude you are sensitive to is an attitude that is producing the deepest resentment. Some of these people do go out there and know very little about what they are doing; they are looked on with scorn by the highly sophisticated professionals they are dealing with. Then when they come back and impose new fines on them, it causes an attitude toward Government that is not very good.

We both have the problem and you have indicated a great sensitivity to it here that I very much appreciate. I know every member of this committee will appreciate that.

Mr. Adamkus. Thank you, Mr. Chairman.

We also face some problems internally with the way we develop cases. In the past, cases were developed in a regional office, with a litigation package sent to headquarters. They were then reviewed at headquarters by staff in the Enforcement Office before referral to the designated Deputy Assistant Administrator for review and subsequent referral to Justice.

It would not be unusual for the headquarters review to take several months. The package, often several hundred pages, would be sent to Justice, and Justice would consider whether to file the case or reject it. Often months would go by without either filing or rejection.

Despite the number of hands and the number of hours spent of litigation packages, EPA enforcement actions still were taken without a clear understanding of the resources the action would require, the position of the adverse party, and even the goal of the action.

Let me describe briefly what we are doing to change this:

On July 1, the Administrator announced the first phase of an Agency reorganization. Among its principal objectives was to consolidate, within headquarters, responsibility for development of legal opinions and guidance within an Office of Legal Counsel and Enforcement. We are confident that this coordination as the Agency initiates or defends litigation.

By advancing the Agency's legal position clearly and consistently we should reduce the level of confusion among firms subject to regulations about what is expected of them. This, in turn, should enhance voluntary compliance and should reduce the level of enforcement activity which is simply the result of misunderstanding.

Regional offices are presently weighing complementary organizational changes.

Although changes in the processing of cases are still evolving, William A. Sullivan, Jr., the Agency's enforcement counsel, has recently stressed to all headquarters and regional enforcement personnel the importance of early communication with firms experiencing compliance problems.

In reviewing cases for referral to the Justice Department for possible filing, Agency policymakers are concerned that many weeks or months have sometimes elapsed between discovery of an apparent violation and notification to the source.

There have also been long periods of time between the last contact with firms and the recommendation that litigation be referred. In some cases, there has been no recent evaluation of whether the problem has been corrected or corrective action initiated.

Where violations are substantial enough to merit enforcement action, the objective of public health and environmental protection is poorly served by delays in resolving compliance problems.

Except for special cases such as those involving possible criminal acts, failing to afford a person or business with the opportunity to correct a compliance problem through informal negotiation may needlessly extend the period of violation, and increase the costs of resolving the matter to all parties concerned.

Where informal settlement negotiations are met with recalcitrance, however, sterner measures may be required to obtain compliance. EPA is taking steps to assure that every reasonable opportunity for informal resolution is pursued, but that where these fail, to be sure that administrative or judicial litigation if promptly initiated and concluded.

By involving EPA headquarters earlier in the case development process but avoiding detailed reworking of each pleading, exhibit, or affidavit in the case, we hope to substantially reduce the average delay of 72 days between submission to headquarters and transmittal to Justice for filing.

Regions will be submitting brief summaries of the key aspects early in the development of cases so that a "go-no-go" decision can be made before substantial resources are devoted to pursuing a particular litigation strategy.

In this way, we hope to process new cases more quickly while reducing the backlog of more than a year's worth of litigation we are carrying at present.

Beyond these significant initiatives, the Agency has an extensive agenda of generic regulatory reform proposals under development. Several go to the very concerns this subcommittee has raised and are tied into our overall program to attain the maximum compliance with environmental standards at the least cost in public and private resources.

We are exploring an "environmental auditing" concept under which firms evaluate and certify their own performance against environmental requirements.

This approach could substantially reduce the number of inspections and their attendant problems.

We are examining a reporting requirements in light of the Paperwork Reduction Act and expect to make substantial reductions in the paperwork burden associated with Agency programs.

A review of the more than two dozen separate penalty policies that EPA developed in the past under our several statutes is underway. Our objective is to develop a simpler comprehensive set of working principles for our enforcement personnel in the field.

I am attaching to my statement the testimony of Joseph Cannon which discusses in detail EPA's implementation of the Regulatory Flexibility Act, and the progress we are making in reducing EPA's burden upon small businesses.[1]

This is not a complete inventory of EPA's efforts to bring the burdens and benefits of regulation into better alinement from the standpoint of the broad public interest. I think you will agree with me, however, that it is an ambitious agenda. We look forward to the opportunity to report substantial progress to the subcommittee in the coming months.

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[1] See p. 12.

This concludes my prepared statement. I will be pleased to answer your questions.

Senator PERCY. I thank you very much, indeed, Mr. Adamkus, for a fine statement. I think we can all agree that the country has made real progress in cleaning up our environment, and we do not intend to backtrack on this. We were on a course that would have been disastrous to the quality of American life, and we had to reverse that course. You and I have both seen major strides made over the years that we have known each other. We wouldn't want to undo those accomplishments and don't intend to, but we do need to focus our resources, I think, on the real problem and not go off on a lot of tangents that really have nothing to do with the main aim and objective that we both share so strongly.

During the course of these hearings and in this staff report we have just released today—I feel it is much more appropriate to take very specific cases. We deal in generalities too much, and the generalities sound fine until you start to apply them in a case. How do all of these regulations affect people? Here is a pile of daily Federal Registers. These are issued every single day. There are tens of thousands, hundreds of thousands of businesses. Is a little mom and pop store, small business supposed to be sitting there every single day looking through these? Trade associations are formed partly for the purpose of alerting their membership, but even trade associations, in some industries, do not have the staff to go through all of this. And we have to take into account we are dealing with individuals, we are dealing with a lot of small businesses.

We have on the floor of the Senate today a bill, the Small Business Act, and we are going to be spending literally—as soon as we finish the DOD bill—the rest of the day and Monday discussing how to strengthen small business. So on one hand, we are saying let's strengthen small business, that is the backbone of American business, they are the future giants of industry maybe, some small businesses struggling to maintain themselves and keep going with high interest costs and all of that, and over here is a Government that is oppressing, harassing these small businesses, not taking into account the problems that they face.

We found such a business in John Grayson, who owns a small water conditioning company in Elk Grove outside of Chicago. He complains about your agency, EPA, and raises several issues we would like your views on. Going back to the history of the situation, in 1976, Mr. Grayson decided to sell a limited number of water purifiers. It was not until he was inspected by EPA in 1977 that he learned for the first time that selling water purifiers qualified him as a pesticide-producing establishment because water purifiers kill bacteria, and under the pesticide regulations, all pesticide-producing establishments must be officially registered with EPA.

While they were there, EPA inspectors purchased a Rain Soft Purifier. Two years later EPA officially charged Rain Soft with failing to register as a pesticide-producing establishment. They also charged the Rain Soft Purifiers failed to meet EPA's purifier standards. Rain Soft was assessed $9,200 in fines, $5,000 for misbranding and $4,200 for failing to register as a pesticide-producing establishment. You can imagine John Grayson's reaction. He was just utterly shocked. He had no idea he was required to register as a pesticide producer.

He also had had his purifier undergo tests by Villanova University, and, by their standards, it easily passed the test. Grayson also felt that EPA had waited too long to do its tests. The shelf life of his product was only 3 months, and EPA did not do its testing until 10 months after purchasing the purifier. In short, he felt he had been wrongly accused and EPA was negligent in its notification and testing procedures.

Yet, like so many small businessmen, he looked from a practical standpoint, at how long it would take and how much would it cost him to fight back. The regulatory agency has public funds available, taxpayers' money, unlimited resources to fight a case. Eventually he settled for $4,500, about half of what was originally charged, but it cost a lot of time and effort and, even more important, a lot of hard feelings and a lot of disillusionment and frustration, all of which was poured out to us as we talked with him.

My first question is about notice. Apparently Mr. Grayson's trade association even did not know anything about the effects of the pesticides regulation. He had not been contacted by EPA and we certainly don't expect small businessmen to read through the whole Federal Register every day. What can we do to improve notice and eliminate or reduce such unhappy surprises for people like Mr. Grayson?

Mr. ADAMKUS. Mr. Chairman, I am familiar with the case. I don't believe I have much to offer except an apology for the way that that case happened the way it happened. Definitely our laboratory analysis took too long because this case was referred to the Department of Agriculture Analysis Beltsville Microbiology Lab and they, because of their reduction in resources, delay the processing of their analysis. This delayed the entire case.

Second, I believe you are right in saying it is difficult to follow all of the Federal Register notices, but at the same time, from the regional standpoint and Agency standpoint, we are trying to carry the message to the small businessmen. And I specifically refer to region V actions. We have instituted a massive mailing campaign to advise the people, individual businesses and the trade associations at the same time. We are establishing hot lines with telephone numbers publicized which are available to all the people with inquiries within the region.

We are trying to be responsive in explaining what the requirements of the law are and definitely we are involving, as you mentioned, the trade associations, providing them this information.

The response is very great. In our last campaign on advising the people about hazardous waste and all the other requirements we received, in a couple of months, over 3,000 telephone calls from people who are interested and trying to be helpful. In this particular case, it is an unfortunate situation that it happened like this, but at the same time, I would like to point out we are not actually going out and trying to find out who is in violation of the law or not.

In this particular case, a concerned citizen called our office requesting our involvement to check out advertising and find out if the product actually does what it is supposed to do and the way it was advertised. And we found out in that case there was some misrepresentation in advertising. That was followed up with the following actions, which you are well aware of. We felt a definite violation of the law occurred in that case. We tried to settle the case because we felt if we implement harsh treatment of this case, it would probably be unreasonable. So we tried to settle the case with him within the provisions of the law and we succeeded.

Even Mr. Grayson feels it was unjustifiable, and I feel myself very uncomfortable in that case but I believe there are some regulations and laws which we are forced to follow and try to carry out whatever has to be done. But at the same time, I would like to point out that we are very sensible about this. Looking into the future, definitely we are going to do our best to prevent such cases.

Senator **Percy**. I Thank you very much. One of the reasons we will leave the record open for as long as we are is to have everyone involved in this to be able to think through what we can do legislatively because we recognize as regional directors, administrators, you are bound to carry out the intent and letter of the law, and we don't expect you to—any more than we expect someone to be arbitrarily harsh—to overlook the intent and purpose of the law. But if you are too bound and if there should be more discretion, in a sense the Administrator is the judge and a Federal court gives a tremendous amount of leeway too.

Certainly it's a rare case when a judge determines the person has no intention, lack of knowledge, had no intention to overlook. It is a different case if they knew well there was such a regulation and they just chose to flaunt it. On Federal taxation, if you refuse to accept it, you should insist he be willing to pay the penalty and the price for it. But if you had no intention to overlook the law, you just simply didn't know it and you are a first offender, and there is no record of any kind of attempt to circumvent the law, a Federal judge would never sentence someone to a harsh penalty.

In this case, I think we ought to have that same attitude.

Are EPA inspectors actually required to cite companies for violations even when they had no prior notice of the regulation, it was a first instance of violation and it was clear the person was not aware that he was overlooking a regulation?

Mr. **Adamkus**. I would like to comment that the regional office in Chicago will be extremely sensitive in all future cases. We are going to consider every case on a case-by-case basis.

Senator **Percy**. Let me turn the card around the other side, and this is my last question and comment to you. I have felt where there are known violations, you have to crack down. Without that, you establish no sense of discipline, no respect for the Government. In this room the flagrant abuse of our student loan program has been cited. Eighty-one percent are in default. Many times when there are plenty of resources to pay off the loans, they just think, "It's the Government, they don't care about it." But you respect the IRS for their tenacity in following up; you respect that Government agency.

I had a former head of the Antitrust Division tell me there is more flagrant, knowing abuse by small business of price fixing than there is with large companies. Large companies are extraordinarily careful. When they do it and they get caught it is a big headline case. But the case of a two-druggist town where the two druggists go out and play golf together and establish sensible—as they would call it—prices for various products, the consumers in that town have no recourse. You can't drive 10 miles to get a tube of toothpaste. They are establishing the price 10 cents higher than they know they should or would under competition.

Those people are to be punished and there are some cases where small companies are guilty of gross violations of EPA rules and you have to find some way to apprehend them. It also seems there are bigger fish to fry than outfits like Rain Soft.

What can EPA do to target its resources to catch more large, environmentally damaging offenses rather than what it appears to be doing, spending an undue amount of time frying small fish?

Mr. **Adamkus**. What we are actually planning in the next 18 months to create is an enforcement unit at the regional level, including the specially trained criminal investigators. We have agreement with the FBI to provide assistance to EPA at the present time, and we have approximately 30 cases in the region which we are going to follow through on. I believe we are on the road specifically the way you indicated, to make sure the laws are protected, obeyed.

Senator **Percy**. Very good.

Ms. Gardebring, do you have any comments you would like to make?

Ms. **Gardebring**. Mr. chairman, I appreciate the opportunity to be here. I think Mr. Adamkus has expressed the point of view of the enforcement staff in EPA.

I was somewhat chagrined myself to see the case that came before us, the *Rain Soft* case. You should be aware, in the regional office, we have instituted a new review program of all the pesticide cases. And I think, since this case was brought to our attention, we have rejected about 50 cases that have come to us from the inspectors.

They were old cases; they were stale. They were really de minimus violations. I think your staff's effort in identifying this one served a useful purpose already in this small way.

Senator **Percy**. Thank you very much and we appreciate you being here. Thank you, very much, Mr. Adamkus, for being here.

Mr. **Adamkus**. Thank you, very much.

[An attachment to the testimony of Mr. Adamkus follows:]

Prepared Statement of Joseph A. Cannon, Acting Associate Administrator for Policy and Resource Management, U.S. Environmental Protection Agency

Good morning Mr. chairman and members of the Subcommittee. I am Joseph A. Cannon, Acting Associate Administrator for Policy and Resource Management of the Environmental Protection Agency. I am pleased to appear before you today to discuss the Agency's progress in implementing Public Law 96-354, the Regulatory Flexibility Act.

BACKGROUND

The Regulatory Flexibility Act requires that Federal agencies analyze the effects of new and existing regulations that have a significant economic impact on "small entities." As defined in the Act, small entities include small businesses, local governments, and small organizations.

The Act mandates that each Federal agency periodically review existing regulations and publish in the Federal Register a plan of review for those regulations with a significant economic impact on small entities. The review determines whether an existing regulation should be left unchanged, amended or rescinded to minimize economic impacts on small entities. The Act requires that each agency annually publish in the Federal Register a list of the rules to be reviewed in the coming year. The list must describe each rule, its need, its legal basis, and invite public comment. Each regulation with significant impact on small entities must be reviewed at least once every ten years.

New regulations proposed after January 1, 1981 must have a Regulatory Flexibility analysis (RFA) or certification that the regulation as promulgated will not have a significant economic impact on large numbers of small entities. Agencies must also issue a Regulatory Agenda listing rules being developed which may have such an economic effect.

I would now like to discuss EPA's implementation of the Regulatory Flexibility Act.

OVERVIEW OF COMPLIANCE WITH THE ACT

The Environmental Protection Agency is committed to minimizing significant economic impacts on small entities. In early 1981, EPA established an Agency Workgroup to plan for implementation of the Regulatory Flexibility Act, including a set of internal guidelines. These internal guidelines are currently under extensive review by the EPA Steering Committee, composed of representatives of top Agency officials.

EPA's Plan for Periodic Review of Existing Regulations was published July 16, 1981. In December 1980, the Agency appointed its regulatory Flexibility officer, Mr. Daniel Fiorino of the Office of Standards and Regulations, who is also our official liaison with the Small Business Administration (SBA). He is responsible for implementation of the Regulatory Flexibility Act, including coordinating review of regulations for economic impact, coordination of Steering Committee and Workgroup activities, and ensuring Agency compliance with the Act.

Starting this month, EPA will list in the Federal Register regulations to be reviewed during the next 12 months in a special section of our Regulatory Agenda. We will ask for public comment on each regulation listed. Our last Agenda was published April 27, 1981.

THE MECHANICS OF REGULATORY FLEXIBILITY

To date, EPA has proposed one regulation which required a Regulatory Flexibility Analysis (RFA). The rule proposed effluent standards and limitations for the porcelain enameling industry. Many other REAs are in process, including: an exemption for small manufacturers from the reporting requirements of section 8 of the Toxic Substances Control Act; several effluent guidelines under the Clean Water Act; revisions of drinking water regulations; and listings of hazardous waste and permit standards under the Resource Conservation and Recovery Act. Our next Agenda will list each regulation under development that may require an RFA.

In establishing minimum requirements for deciding whether a Regulatory Flexibility Analysis is necessary, EPA programs must first define "small entity." For this purpose, the lead office may either: (1) use the definitions of "small entity" in the Act, or (2) develop its own definitions by consulting with the SBA and allowing public comments.

After defining "small entity," the Agency must determine whether the regulation will have a "significant impact" on a "substantial number of small entities." We make this determination on a case-by-case basis using the criteria discussed below.

In general, a "substantial number" of small entities is more than 20 percent, but the 20 percent rule is not fixed. There may be cases where the intent of the Act indicates the need for an RFA when less than 20 percent of small entities are affected. For example, some regulations could impose such severe economic hardship on a few businesses that the RFA would be necessary, even though the total number affected might be small.

To determine a "significant economic impact" the lead office considers annual costs, capital costs, and potential plant closures.

The third aspect of EPA's compliance with the Act is reporting information on small entities in the Regulatory Agenda. Our Agenda deals with this in two ways:

1. In the section of our Regulatory Agenda where EPA gives small entities general notice of regulations that may affect them, we add one of the following three determinations:

Likely—(to have a significant impact)
Unlikely—(to have a significant impact)
Not yet determined

2. If EPA is certain that an RFA will be prepared, we add "RFA" to the section of our Regulatory Agenda which outlines the kinds of analyses a regulation requires.

After reviewing the economic and substantial number criteria, the lead office may conclude that an RFA is unnecessary. In that case the Administrator will certify at the time of publication of the proposed or final rule that the rule will not have such an adverse impact. Such a certification must contain a succinct statement of the reasoning and criteria used to make the determination.

One problem EPA has encountered with the Act is interpreting whether it applies to regulations that have a significant beneficial impact. Such an application could be justified by the legislative history of the Act, but this interpretation may interfere with the goal of the Act, which is to reduce unreasonable burdens. EPA amends many existing regulations to reduce regulatory burdens, such as reporting requirements. Preparing an RFA for these regulations would be costly, as well as delay the regulations that small entities may want.

EPA believes that the best way to deal with this issue is on a case-by-case basis. To require RFAs for all regulations that have a significant beneficial impact will delay many regulations, including those for which an RFA would not be fruitful.

THE REGULATORY FLEXIBILITY ANALYSIS (RFA)

The RFA summarizes the economic impact of a regulation on small entities and discusses alternatives that might minimize the impact and still accomplish the statutory objectives. The most sophisticated RFA would contain the following elements:

1. Explanation of why EPA is considering action;
2. Objectives and legal basis of the rule;
3. Identification of alternatives;
4. Demographic analysis;
5. Cost analysis;
6. Competitive effect analysis;
7. Exemptions or allowances;
8. Identification of overlapping regulations; and
9. Summary of public comments.

In order to comply with the Act's requirement to coordinate its implementation with SBA, the Office of Standards and Regulations transmits copies of certifications and RFAs to SBA.

One of the major goals of the Act is to encourage agencies to "tier" their regulations, that is, to exempt or to set less stringent requirements for small entities. EPA has issued more than 40 regulations that have less stringent requirements for small businesses. For example, we have exempted "small generators" from regulations under the Resource Conservation and Recovery Act. In addition, our New Source Performance Standards Program under the Clean Air Act and our Effluent Guidelines under the Clean Water Act include many examples of tiering.

EPA also tries to make exemptions consistent across various programs affecting the same industry, when it is appropriate to do so. Industrial Assistance Staff in our Office of Policy Analysis monitors the process to identify inconsistent exemptions. As a further aid, the Regulation Management Staff in the Office of Standards and Regulations will maintain a catalogue of exemptions based on certifications, previously prepared RFAs, and exemption information included in the Agenda.

Since public participation has always played a key role in the rulemaking process, small business and other small entities may comment on any rules that significantly affect them. Lead offices satisfy this requirement of the Act by taking special measures to involve small entities in regulations that affect them.

Both our Solid Waste and Toxic Substances Programs have special hotlines to respond to questions and problems of small business. Finally, we are considering appointing a Small Business Ombudsman in the Office of Policy Analysis to assist small business experiencing regulatory difficulties.

PLAN FOR PERIODIC REVIEW OF EXISTING REGULATIONS

The Act requires that EPA screen its existing regulations to identify those that may have a significant economic impact on a substantial number of small entities. On July 16, 1981, EPA published in the Federal Register our Plan For Periodic Review of Existing Regulations. In deciding whether a regulation imposes significant impacts we look at such factors as high annualized costs for pollution control, the extent of reporting or recordkeeping burden, the relationship of pollution control costs to sales, and the anti-competitive effects of a regulation on small businesses. We are in the process of reviewing public comments received in response to the Notice.

In the October 1981 Agenda EPA will announce seven regulations for review under the Act. They are:

New Source Performance Standards for Grain Mills under Section 111 of the Clean Air Act;

General Pretreatment Regulations under the Clean Water Act;

Lead Phasedown Review under section 211 of the Clean Air Act;

EPA's Public Participation Policy

General Requirements for Storage Facilities under section 3004 of the Resource Conservation and Recovery Act (RCRA)

Incinerator Standards under RCRA 3004

Financial Responsibility regulations under RCRA 3004

In addition, revisions of existing EPA regulations that have significant impacts on small entities are already underway in the drinking water and other programs. We are also reviewing paperwork burdens in the RCRA Program.

The mechanics of EPA's periodic review are as follows:

Starting in October 1981, EPA will list regulations to be reviewed during the succeeding 12 months under the Regulatory Agenda and will ask for public comment on the need to revise each regulation listed.

After considering public comments and other available data, the Agency will announce the result of its review either in the subsequent April Agenda or, if more review time is necessary, in the next October Agenda. The decision in each case will announce either no change in the regulation, a revision, or a rescission. EPA will explain the basis of its decision.

EPA will decide to revise a regulation if (1) the existing burdens on small entities are unreasonable, or (2) there are alternatives that should be considered because they may minimize impacts on small entities.

We may amend our plan for review of regulations under the Regulatory Flexibility Act after we develop procedures for reviewing additional regulations under other regulatory reform statutes and Executive Order 12291.

CONCLUSION

In closing, I would like to emphasize that EPA will continue its efforts to minimize the regulatory burden on small entities. The Small Business Ombudsman, when appointed, will further assist small business with their specific problems and will provide another mechanism for response to their interests and needs. Moreover, we anticipate that our implementation of the Regulatory Flexibility Act will aid in promulgating cost-effective regulations.

As requested, Mr. Chairman, I am providing materials for the record which include my prepared statement, a copy of our ten-year periodic review plan, an example of an initial RFA, and a copy of our April Agenda. We will forward a copy of our October Agenda to the Committee as soon as it is published.

This concludes my prepared remarks. I would be happy to respond to any questions you may have.

Senator **Percy**. Our next witness is Mr. W. Harlan Sarsfield.

Mr. Sarsfield, if you would take the witness stand. Mr. Sarsfield is Regional Director of the Federal Deposit Insurance Corporation, FDIC. We know FDIC implements several important regulations designed to protect the American consumer. I have a particular interest in one of them—all regulations flowing out of the Truth in Lending Act. When I debated my former professor, Paul Douglas, for the Senate seat in 1966, I told him a dear friend of mine at the time—I felt terrible defeating him but I would have felt even worse if he defeated me—that I would do everything I could to implement laws that he had worked on and had not yet been able to put in.

He did an awful lot of work in the Indiana sand dunes. Truth in lending is one of the things he fought for for 18 years and never got into being. He never was able to reconcile all the opposing forces, and I took that on as a major assignment and finally, with the help of Sears & Roebuck and J.C. Penney Co., and a number of other organizations, convinced them it was in the best interest of the industry to do this, and we moved ahead and did enact and reported it out of the Banking Committee when I was on the Banking Committee.

Regulation Z is a rule which contains requirements imposed by the Truth in Lending Act and which recently have been quite controversial.

Mr. Sarsfield, we asked you to address yourself to implementation of these regulations, especially at the regional and local level. We look forward to your testimony this morning.

TESTIMONY OF W. HARLAN SARSFIELD, REGIONAL DIRECTOR, FEDERAL DEPOSIT INSURANCE CORPORATION

Mr. **Sarsfield**. Thank you, Senator.

I welcome the opportunity to appear before this subcommittee to discuss the administration of various consumer laws and regulations by the Chicago Regional Office of the Federal Deposit Insurance Corporation, with specific reference to the Truth in Lending Act and Federal Reserve regulation Z.

The FDIC, in addition to its role of insuring bank deposits, has responsibility for supervising State banks which are not members of the Federal Reserve System.

In the Chicago region, which encompasses the States of Illinois and Indiana, there are approximately 1,000 banks under our jurisdiction. Supervisory responsibilities entail the examination of banks to determine if their financial condition and managerial efforts are sound and pose no threat to the safety of depositors' funds.

Additionally, compliance examiners make a determination regarding the bank's adherence to the various Federal consumer protection and civil rights laws. The performance of the bank is assessed at periodic examinations which are conducted by trained examiners.

We have also directly assisted the industry in meeting its responsibility under the consumer laws by conducting educational seminars and by responding to direct inquiries regarding particular problems an institution may have.

The degree of supervision accorded to a bank is dependent upon our assessment of its condition. Typically, the extent of supervision is limited to a periodic examination. If more serious problems are evident, the bank may be requested to enter into an informal correction program.

In the most extreme cases, the regional office will recommend that the Board of Directors of the FDIC initiate cease-and-desist proceedings under section 8(b) of the Federal Deposit Insurance Act.

In particular, section 108(a)(c) of the Truth in Lending Act specifically directs the Corporation to administer the law for all banks which it supervises. Our examiners are specifically trained in assessing conformance with the Truth in Lending Act through classroom instruction at our Washington training center and by on-the-job training.

The assessment process involves the review of a statistical sample of loan transactions and a notation of all violations of the act and regulation. The bank is always requested to correct the practice causing the violation. In addition, if the violation involves the understatement of the annual percentage rate or finance charge or the violation concerns the disclosure of credit insurance premiums, the bank may be required to refund the overchanges to its customers.

Section 108(e) of the act, enacted as a part of the 1980 simplification of the act, contains the reimbursement provisions. These provisions mandate that specific action by taken in some instances and allow the financial regulatory agencies an amount of flexibility in some instances.

Generally, these provisions are triggered where the APR annual percentage rate or finance charge is understated by more than one-quarter of 1 percent and this occurred because of: (1) Willful disregard of the law; (2) gross negligence; or, (3) there was a clear and consistent pattern or practice of violations.

If understated APR's or finance charges have occurred, apparent reimbursable violations will be listed in the report of examination. They are then reviewed by the regional office. If the regional office concurs with the examiner's finding, then a transmittal letter is sent to the bank with the report of examination notifying the bank of its right to make voluntary reimbursement to the affected customer within 60 days as called for in section 108(e)(6) of the act.

If the bank chooses not to voluntarily take action, then the FDIC will consider a formal cease-and-desist action. If the bank believes that it has not committed a reimbursable violation or that it should be excused from reimbursement under one of the grounds in the act, it can request relief and the Board of Directors of the FDIC will consider that request.

The Federal Financial Institutions Examination Council established a reimbursement policy guide which explains the act and states the corrective action the financial regulatory agencies generally will take where we are allowed flexibility.

In a bank letter dated July 16, 1980, the Corporation forwarded a copy of these procedures to all of the banks that it supervises. The administrative enforcement provisions primarily address themselves to inaccurate disclosures of the annual percentage rate, which is considered the most important disclosure made by the creditor.

Inaccurate disclosures may result from the failure to properly factor in prepaid finance charges, from improperly disclosing the cost of credit life insurance, or from general inadequacies in the training of bank employees.

Section 108(e)(2) of the Truth in Lending Act requires that the supervisory agency institute formal enforcement proceedings if the bank fails to provide restitution within the 60-day period following notification. The Chicago Regional Office has yet to ask the Board of Directors to compel any bank to provide restitution.

It is noted that an examiner will often find an isolated error which constitutes a reimbursable exception. In those instances, the FDIC does not require the bank to reimburse the customer.

Instead, a recommendation is made that the bank refer to section 130(b) of the act which pertains to civil liability. That section states, in part, that the creditor may eliminate its civil liability by notifying its customer of the error and appropriately adjusting the account so that the customer does not pay an amount in excess of the annual percentage rate actually disclosed.

The decision concering adjustments in this situation is entirely in the hands of the board of directors of the bank. The regional office does not ask a bank to redisclose terms of a transaction if the original were in error.

In conclusion, the Chicago Regional Office of the FDIC is charged with the administration of the enforcement provisions established by the Truth in Lending Act.

Mr. Chairman, you and the members of the subcommittee are assured that the actions of the Chicago Regional Office in this region are taken in the fairest and most evenhanded manner possible and that supervisory actions are always preceded by careful consideration.

This posture adopted by the Corporation, however, does not negate the need for Congress to initiate a major overhaul of the truth-in-lending law at an early date.

As FDIC Chairman William M. Isaac noted during his testimony before the Senate Committee on Banking, Housing and Urban Affairs on October 30, 1981, the truth-in-lending law is badly in need of substantial simplification.

The law is overly complex and the lack of agency discretion to pursue a reasonable course makes enforcement remedies inflexible.

Senator PERCY. Thank you, very much, indeed, Mr. Sarsfield.

I hasten to add because of your last comments that the law is overly complex, it has been 13 years since I had anything to do with the law.

We did report it out of the Banking Committee in my first session of the Senate. It didn't seem very complex at that time as we wrote it, but maybe the complexity has been built into and grown into the law.

Is it the law plus all of the regulations now attendant to that law that makes it somewhat complex?

Mr. SARSFIELD. Yes, the law is only a small pamphlet. The regulations are much more complex and the subsequent interpretations and staff opinions by the Federal Reserve that wrote the regulations in the first place have been very voluminous.

Senator PERCY. I want to say that I have cited through the years that by regulatory reform, we mean there are some agencies we would just like to do away with. CAB, for instance, is an agency that has served its usefulness and ought to be phased out of existence. There is enough competition in the airline field as we see it. Safety in the air, yes, we need regulation, but not the things that can be done better by the marketplace. But FDIC is one of the most vital agencies we have. No one would want to turn the clock back to where we were when my father was a banker.

The bank failed and people even actually got 20 cents on their deposits because the bank too heavily invested in fixed assets and real estate, all of which was nonliquid at that time. We knew we needed some better system than that. That was just chaos. Many individuals and businesses were bankrupted because of it.

FDIC, the insurance provisions of it, is absolutely essential to the stability of our economy. Certainly an outgrowth is that truth in lending has added to your responsibilities, in addition to the basic purpose for the agency.

I am holding up here a copy of the most recent set of regulations on regulation Z. It is a very complex document, as you have pointed out.

It is complicated and you would agree with that.

How do you train your examiners to implement a complicated regulation like this, for instance?

Mr. **Sarsfield**. We, first of all, have a training school in Washington where we send our examiners for 1 to 2 weeks at the outset. They are provided with all of the regulations, the interpretations that we have.

We conduct seminars in our own region of our people before they embark on the compliance examination program which is separate and distinct from the normal commercial bank program.

They are different examiners, they prepare separate reports and they have a different responsibility. It is a very difficult thing. It is not popular with examiners because they are bank examiners, they think, they are not compliance examiners. This has required some persuasion on our part to indoctrinate them into this different phase and to persuade them of its importance from the banking standpoint and the banking relationship to society.

It takes a continuous upgrading of their capabilities in order to make sure that they are conversant with the latest changes, latest interpretations and any changes in legislation.

Senator **Percy**. How long do you suppose it takes to get an examiner up to speed in this area?

Mr. **Sarsfield**. The examiners that we assign to this position are what we called grade 12 journeymen examiners and they reach that point of a grade 12 after 5 to 6 years. It is at that point they are then persuaded to get involved in the compliance examination. So they are experienced examiners to begin with. They then have to learn the complexities of the regulations, and I suspect it takes probably a year before they are really able to develop a technique that permits them to feel reasonable comfortable in their findings and dealing with management on that basis.

Senator **Percy**. An issue of every regulation is sent to every bank, is that correct?

Mr. **Sarsfield**. Yes, everything that comes out in regulations and official interpretations. The staff opinions are not sent to each bank, but the regulations are.

Senator **Percy**. The banks are responsible, then, for learning what is in the regulation and making appropriate changes in their operations?

Mr. **Sarsfield**. Yes, we think the banks are responsible for not only making sure they understand the regulation but to establish policies within their operations coming from top management to insure that everyone on the bank staff recognizes the importance of complying with these laws and regulations. We feel that top management should be directly involved in policymaking and establish procedures to make sure at all levels these regulations are complied with.

Senator **Percy**. And the regulation applies in full force to the largest banks, as well as to the smallest banks?

Mr. **Sarsfield**. Yes; it does. There are no exceptions.

Senator **Percy**. Chase Manhattan, on whose board I served for a dozen years, as well as various small neighborhood banks that my father worked in many years ago.

Mr. **Sarsfield**. This would be right.

Senator **Percy**. Could you explain in layman's language what redisclosure involves?

Mr. **Sarsfield**. Redisclosure involves a redisclosure to a customer of an initial annual percentage rate or finance charge that is calculated when the person makes application for a loan. The whole purpose of preparing the annual percentage rate was to permit a customer to go to any financial institution that makes the kind of a consumer loan that he or she wants—real estate, consumer, automobile installment, or whatever.

All of the charges are supposed to be added into that finance charge and then the annual rate is to be established so that it is done the same way by all financial institutions. This enables the customer to take that annual percentage rate and shop around to other financial institutions to get the best rate. If that annual percentage rate is understated and the customer takes that particular transaction and that deal that is offered by this particular bank as being a better deal than he can get anyplace else, and later it was determined the annual percentage rate was inaccurate, then he has probably, to some degree, been damaged if there were other better rates available.

Redisclosure means going back to the customer and providing him with an accurate annual percentage rate and if it falls outside the guidelines, to make a restitution to the customer for any overpayment that he may have been charged.

Senator **Percy**. I would like to say again, as I have indicated before, I think the best way is to take a specific example and see what the impact has been.

Tri-State Bank of East Dubuque came to our attention at our hearings. It is a 1-branch bank in a town of 2,500 people. It is certainly not a Chase-Manhattan, just a 1-office bank. They have only 450 home mortgage loans. Like other banks, they are routinely inspected by examiners from your office. After a 1977 examination, your Regional Counsel wrote the board of directors of the Tri-State Bank and told them that they should redisclose. So they did. They went back through all their loans—and I will just check the record on that—they contacted their customers, and according to their statements, gave them the new information. Two years later, 1979, your office did another examination and turned up new problems. It was under the same set of regulations but a different section of those regulations.

So the bank reviewed all their files again, contacted their customers and explained this problem. Then the restitution requirements went into effect.

More than a year later, your office wrote the bank's board of directors and told them they had 60 days to search its files again and contact its customers, again to explain its errors. But this time it had to reimburse them for any errors.

Furthermore, you wrote them denying the Agency had recommended redisclosure as a cure for violation. The bank finally, in desperation, just simply decided to get out of the single-family home lending business and that town of 2,500 people is deprived of a service that they had been offered.

I am sure, at least I hope there are reasons for what actually happened. The circumstances are disturbing. The bank is obviously confused, its customers confused, and your Agency appeared, at least to them, to be compounding the problem by issuing contradictory instructions.

I wonder if this case is familiar to you, Mr. Sarsfield, and I wonder if you can give us some clarification as to what actually happened from your vantage point?

Mr. SARSFIELD. The case is familiar to me, and I would prefer not to respond to it specifically for two reasons. It is quite complex and I would need to review the files specifically before responding. And the second reason, banking matters are quite confidential, as you are well aware, and to discuss the matters of a bank which might be confidential would be something I would prefer not to do

Senator PERCY. Could you agree to give me, on a classified basis, information that would give me knowledge for my own use, to satisfy myself on the problem, and then we will keep the record open, as I have indicated before, so whatever can be made public on this case, now that I have outlined the nature of the problem, so that we can put into the record whatever can be done on a nonclassified basis.

Mr. SARSFIELD. We will be glad to respond in detail to you.

Senator PERCY. Thank you very much. I would appreciate that. Are there any further comments you would like to make?

Mr. SARSFIELD. Thank you.

Senator PERCY. Thank you.

I appreciate very much your being with us.

Our third witness, Mr. Alan McMillan.

Mr. McMillan, would you come forward?

He is Regional Administrator for Region V of the Occupational Safety and Health Administration. OSHA, as it is better known, is charged with the responsibility to enforce regulations protecting the American worker from health and safety hazards in the workplace. This is an area I feel particularly strong about. I, over a period of years, took tremendous pride in the health and safety record that we had achieved.

One of the great days I had in industry was to receive a 3 million man-hour award from our insurance agency for having worked 3 million man-hours consecutively—person-hours, I should call them now—without a single lost time accident in an industry which had many, many hazardous parts to it—punch presses, drilling machines, molten zinc, alumimum, magnisium, and so forth. I do know what it feels like to run a safe shop, and I have always figured the best way to run it and to keep your insurance costs down is to do it on that kind of a basis.

I am a strong supporter of efforts to make working environments safe and crack down on companies who disregard life and limb of their people.

Today we have asked you to deal with one aspect of OSHA's mission, performance of inspections. The inspector is the first point of contact. When they bang on that door and say, "we are Federal inspectors, we want to come in," they start to react and they react to the Federal Government all through the visit of that particular individual or individuals. I will be interested in your views on how OSHA performs inspections.

Pleased to have your testimony.

TESTIMONY OF ALAN McMILLAN, ACTING REGIONAL ADMINISTRATOR FOR REGION V, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, DEPARTMENT OF LABOR

Mr. McMILLAN. Thank you, Mr. Chairman, members of the subcommittee.

I am Acting Regional Administrator for the Occupational Safety and Health Administration in Region V. One of the 10 OSHA regions, Region V is headquartered in Chicago and consists of 6 States—Indiana, Illinois, Michigan, Minnesota, Ohio, and Wisconsin. Of these, 3 have have job safety and health programs administered by the Federal Government and 3—Michigan, Minnestota, and Indiana—have federally approved programs administered by the States themselves.

There are 14 area offices, in Region V and 3 district offices. Our responsibilities include guiding OSHA's area offices in their inspection responsibilities, providing education, training, and information to employers and employees in the region, assisting other Federal agencies in protecting their employees, and working closely with the State occupational safety and health programs.

Under this administration we are following a new approach to carrying out our responsibilities in the region under the Occupational Safety and Health Act of 1970. OSHA regional and area office employees look upon their role as more than simply enforcement. The focus of my field staff is not solely on citations and monetary penalties, but abatement of workplace hazards. This is a significant change from OSHA's past field enforcement philosophy.

The instructions we have received from Assistant Secretary Auchter are to emphasize a broad range of programs designed to help employers and employees recognize and remove hazards from the Nation's workplaces.[1]

We will also encourage States to play an increasing role in regulating workplace safety and health. Each aspect of OSHA's new policies and programs in Region V is designed to eliminate any adversary spirit that may hinder OSHA's effectiveness.

By encouraging employers and employees to work together, we are more likely to achieve improved workplace conditions.

No new policy that emphasizes cooperation can be effective unless those of us charged with carrying it out do so in a manner that reflects this new attitude. For example, although the act requires us to issue citations where a violation is found, it does not follow that we are bound to a policeman's approach to workplace safety and health.

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[1] See p. 41.

While we must cite for violations of standards, we can do so in a constructive manner, offering suggestions for abatement. If abatement occurs, we have the flexibility to adjust penalties.

The ability to build a more cooperative relationship depends largely on the helpful and professional manner in which the agency's compliance officers conduct themselves. Consequently, Assistant Secretary Auchter has issued a directive to all OSHA compliance safety and health officers reminding them that their demeanor is the basis on which the agency is judged by the public.

In this directive, compliance officers are encouraged to explain to employers and employees that, besides inspections, the OSHA program includes other ways to protect the workforce such as training, education and consultation.

The training given to OSHA compliance officers at the agency's training institute in Des Plaines, Ill., is also being revised to emphasize a more helpful approach to employers. OSHA's compliance officers are being instructed to make a positive contribution at every workplace visited; this may be technical advice or general information on how to recognize or eliminate workplace hazards.

We have also taken steps to utilize our compliance staff more efficiently. On October 1, 1981, in region V and OSHA's other nine regions, we began implementing a new system of targeting safety inspections by identifying and inspecting workplaces in the manufacturing sector where the most serious safety and health hazards exist.

Under this system, a scheduled safety visit to a firm with a good safety record remains just that—a visit and not a comprehensive inspection. This gives us the opportunity to visit more worksites and to concentrate on those where problems are likely.

In construction, in other hazardous mobile worksites, and in workplaces with particular local problems, we will continue to schedule safety inspections as before.

In our implementation of the OSHA program, we in region V reflect the new emphasis on cooperation; we also are attuned to the agency's present effort to use the wide array of activities authorized under the Occupational Safety and Health Act of 1970. In addition to inspections and standards enforcement, all the tools available under the act—education, training, consultation, programs for voluntary cooperation and State programs—are being utilized and melded into a balanced program mix.

We are also taking steps to end redundant Federal enforcement efforts in the three States in region V with their own federally approved job safety and health programs. We are endeavoring to increase the effectiveness of the educational, training, and consultative services offered under the OSHA program and to encourage employer-employee efforts at self-help.

Many employers, particularly those with small businesses, need assistance in understanding their safety and health responsibilities. In region V, we make onsite consultation services available to such employers at their request and at no cost to them. Similar services are offered in all States.

The purpose of a consultative visit is to help employers identify and correct workplace hazards.

The value of onsite consultation is illustrated by the reaction of a small business employer in Illinois. His letter to State officials included the following comments, and I would like to quote from his letter:

> We wish to commend you for the availability of this service and feel that it is an excellent way to augment the Federal OSHA Program. We especially like the cost, confidentiality and the absence of penalties aspects of the consultation service.
>
> The thing that impressed us the most, however, was the competence, knowledgability and professionalism of the gentleman making the inspection. He was thorough, and covered every part of the jobsite. He noticed a number of things that had not come to our attention and he had a complete working familiarity with the standards. Also he was generous with his suggestions on ways to make our workplace safer.
>
> In short, it was an educational and rewarding tour and we are sure that we have a safer site because of Mr. ———————'s visit.
>
> For this we thank you.

Thus, within region V, we are participating in the national effort to use a multifaceted approach to workplace safety and health problems. In a spirit of cooperation and assistance, we are moving along new paths to help employers and employees eliminate job-related hazards.

That concludes my prepared statement. I will be happy to answer any questions you may have.

Senator PERCY. Thank you very much.

I would like to first ask you about your title of Acting Regional Director. Mr. McMillan, how long have you had that "Acting" in front of it?

Mr. McMILLAN. Senator, I came out to Chicago from a short tour in Washington on about April 1 as the Acting Deputy Regional Administrator, was made Acting Regional Administrator on July 1, and it is my understanding that since this testimony was prepared and written, Secretary Donovan has signed my papers effective last week.

Senator PERCY. He signed what?

Mr. McMILLAN. Signed the papers making my appointment official as of last Monday.

Senator PERCY. It took how long?

Mr. McMILLAN. Approximately 4 months.

Senator PERCY. I am glad. I would have insisted we do something about it. I always dislike this hanging in limbo sort of a situation. It isn't a very good business procedure. Someone ought to make a decision. I am delighted a decision has been made.

Mr. McMILLAN. Thank you.

Senator PERCY. Can you tell us, are there built-in regulators for the same purpose and objective that OSHA has that eliminate a lot of unnecessary inspections and duplicative effort, and so forth, and what are they? For instance, insurance rates, insurance records on accidents: are insurance rates for a particular business reflective of the hazard of that business, the industry itself and the particular firm involved and do they, in a sense, help to self-regulate the company, cause them to have safer practices simply because they are paying higher insurance rates if they don't?

Mr. McMillan. Senator, I am not an expert in that area, but I would say that quite clearly it is a motivating factor of the employer to bring his insurance costs down and quite clearly the way in which that is done is by the accident and injury rate in that particular facility being reduced. There are very few companies we have any contact with who are not quite aware of the cost that they pay in their insurance premiums and would like, with help they can get from any sector, including OSHA, to be able to find ways in which to reduce their accident rates and bring those premiums down.

Senator Percy. You mentioned visits in the course of your testimony. I have always believed in management by exception. You don't spend your time on things that are going well. You spend your time on things that are not going well. Do you have a system for something being triggered? Do you cooperatively work with the insurance industry, for instance, whenever there is a high level of accidents that come in and insurance premiums go up for a particular firm in an industry where they are well above average? Do you get any kind of notification or do you have to go out and seek and search and find those situations?

Mr. McMillan. We get data basically through our national BLS system which identifies accident and injury rates and that information is distributed to area offices throughout the field. Through that we identify the high hazard SIC manufacturing firms. Those are the firms we target for our general scheduled inspections. However, I would like to go one point farther than that. We have done that for the last few years, targeting all firms within a general SIC that has a high rate. However, we know there are firms even in a high rate industry group that have a good record and others have a worse record. Our new system, which we put in place on October 1, allows our compliance officers, prior to making the actual inspection, to do what we call a records review with the employer and employee representatives. We sit down in the facility and go over their accident and injury data and calculate their lost work day rates and, if that particular establishment is below the national average, 5.2, we do not go forward with an inspection of that facility. We thank them, compliment them on their progress, then we withdraw and go to another place where we feel our need is greater.

Senator Percy. Let's now take a specific case. I will go to the Decatur hearings we had. Grigoleit is a company located in Decatur. And OSHA inspectors visited their plant to investigate a complaint about harmful fumes. No violation was found. The inspector then did a wall-to-wall examination. He cited Grigoleit for a noise violation and fined them $360. In this case, the company objected.

They just knew, were convinced they were not operating contrary to regulations. They then went out and hired noise inspectors and they hired lawyers to prove their case. The fight went on for 8 months. OSHA ultimately withdrew the citation. The company—instead of paying $360—had they accepted it they could have written it off; the cost would have been virtually half that to them probably—they decided as a matter of principle to fight the government.

The cost to them was $30,000. That is why so many companies, when they feel they have been wronged, just figure the heck with it, I just have to go along and that is what really builds resentment. This complaint and the battle that followed it all rose out of a simple, fairly straightforward inspection.

Could you explain how your field office monitors those inspections to make sure that your field inspectors don't make completely erroneous charges?

Mr. **McMillan**. Senator, I have reviewed the 1979 *Grigoleit* case, and I assure you it caused me probably as much consternation as it did you. A number of things were done right on this inspection procedurally. The handling of the employee complaint, our conducting the inspection and, in fact, the look at the noise issue were proper. The noise that the industrial hygienist reviewed was noise emanating from one of the pieces of equipment which the complaint named as giving off oil mist. There wasn't an oil mist problem, but high noise levels were noted and measurements were taken. From a technical point of view, I would have to say from that point on, we did not do the job we should have done. We had some problems with equipment failures and, I must also add, we had problems with not completely following our manual regarding the number and types of samples that should have been taken.

The bottom line, as you already indicated, was a proposed penalty. The company did get consultants and attorneys and they did ultimately prove that their case would prevail and, accordingly, we dropped the case. I might add that out of that unfortunate situation, employees who are operating those punch presses now are wearing hearing protection. They were not prior to our inspection, and it may or may not be a direct result of our activity.

The technical issues in this case were extremely complicated and even though there was a possibility of noise overexposure our final review, from a legal point of view showed that we did not have the case to go forward with.

Senator **Percy**. I keep in close touch with organizations I have been a member of and belonged to for decades, not since I have been in public life, but I have kept in contact with them because they are a great source of information. The Illinois State Chamber of Commerce, Chicago Association of Commerce and Industry, National Metal Trades, National Manufacturers Association, U.S. Chamber of Commerce, NAM, et cetera.

I hear so many complaints, not only from executive directors, but company members, that inspectors who come in they would never hire. They are simply not qualified. They don't know enough. One of the jobs is to educate them as to what their job is to be and what they are to be looking for.

In your testimony, you mention changes are being made, and I was particularly pleased to hear about this, in the training given to OSHA compliance officers at the institute in Des Plaines, Ill. Could you explain a little more fully how the training program is being changed and, in the future, will that training emphasize expertise and technologies these people will be responsible for inspecting?

Mr. **McMillan**. Yes, I would say that our institute has continued to grow over the past 5, 6, 7 years. We are in a relatively new facility in Des Plaines, a very modern facility that houses as part of its training activities hands-on equipment such as the type of safety equipment, presses, laths, on into the health area of radiation, ventilation booths, et cetera, that the compliance officer will deal within the field.

The general training pattern is that we will give a compliance officer, safety or health, approximately 3 years of formal training that will consist of both classroom training sessions, on-the-job training, training put on by the area office and by the regional office. When one of our compliance officers reaches the grade 11 level, which is the first level of what we call full performance, at that point they have gone through a rather rigorous 3-year program of a mix of classroom and on the job training with senior people.

I want to add to that, even though their technical competence is certainly a key and critical part, we are now also concerned with giving them training that involves such things as demeanor, attitude and their perception of their role as it relates to their presence in someone else's workplace particularly as it would be perceived as being adversarial or being helpful.

Senator PERCY. In your testimony, you refer to a new system you are beginning to implement in region V for targeting safety inspection by identifying and inspecting workplaces where the most serious safety and health hazards exist.

It appears this system could help you use you inspection resources more efficiently.

Could you be more specific about how you will identify the most hazardous workplaces? I have already covered part of that in my earlier question to you.

Mr. McMILLAN. What it does is allows us not just to identify a company in a broad category which is high hazard, but review the records of that specific company, if they are below the national average, not go forward with an inspection. It allows us to use our resources then in the other places. It even has another benefit in that it allows us to recognize those companies that have done a very good job and, in some cases, perhaps, come out with technology of how this particular establishment is dealing with a problem that others in the industry are not yet aware exists.

Senator PERCY. Are OSHA inspectors required to issue citations and fines for first instance violations, even when the employer was unaware of the regulation he was violating?

Mr. McMILLAN. Let me respond to two things.

First of all, the citation is issued by the area director. The compliance officer on site does not issue the citation. We do issue citations for first instance violations. However, if there is an issue of employer knowledge that is in question regarding the hazard, that is taken into consideration prior to the issuance of a citation. If the employer can show he was not aware of the hazard or should have, through reasonable prudence, been aware of the hazard that is then taken into consideration.

First instance sanction is a policy which we have followed since the start of the program and are still following today.

Senator PERCY. Finally, in your testimony you mentioned OSHA's onsite consultation services. We do have this in the State of Illinois. The letter you quote in your statement shows how effective it actually can be. When we checked the people in our own State, we found businesses just are not taking full advantage of it.

Do you have suggestions on how to encourage the business community to use the service to give you a positive way to achieve health and safety goals?

I would be happy through the organizations I mentioned to encourage them in their publications to tell about this new service.

Mr. McMillan. We had some concern several years ago when this program began to be implemented that employers were going to be reluctant to utilize an "OSHA program" that was based on their making a voluntary request for OSHA to come in and assist them.

We've gone to great pains, probably further than we needed, to make sure there was a clear separation between the OSHA consultation program, which is really implemented by the States and funded by us, and our Federal enforcement program.

There is no field crossover between these programs because State employees do consultation with 90 percent Federal funding.

My evidence about the Illinois program, and it is a fine program in that State, shows that in fiscal year 1981, 1,566 consultation visits were conducted by 14 safety specialists and approximately 5 industrial hygenists.

That is a major workload. We are talking about 1,500 plus consultation visits per person. They carry an ongoing backlog in Illinois of somewhere between 50 and 75 requests at all times. I think this degree of utilization shows that positive information about these programs is now being assimilated a little bit better than in the past.

We do have a problem with resources. We have therefore, been skeptical of generating such a large degree of requests that we cannot accommodate them; this might do us more harm as far as credibility is concerned than our current system.

Senator Percy. Mr. McMillan, I thank you very much, indeed, and appreciate your fine testimony.

Our next and final witness is Miss Ellen Shong.

Miss Ellen Shong is Director of the Office of Federal Contract Compliance Programs, the agency that carries out affirmative action programs that apply to Federal contractors.

Recently, the office published proposed revisions to the regulations for that program.

Our purpose here today is not to examine these proposals; detailed review of of OFCCP's program is being carried out by the Labor and Human Resources Committee which has scheduled hearings next week.

Our questions relate to how the agency's field officials carry out their responsibilities. I received reports from Illinois complaining about OFCCP's field office saying field officials are hostile and confrontational.

This goes right back to where we started with Val Adamkus, the attitudes he is trying to get out of his field inspectors' approach.

This concerns me deeply as one who has always been a strong supporter of equal employment opportunity. I am afraid the agency may be hurting itself in undermining its own effectiveness for the contracts it regulates.

Ms. Shong, we are pleaased you could come and testify this morning. We look forward to hearing your testimony.

TESTIMONY OF ELLEN SHONG, DIRECTOR, OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS, DEPARTMENT OF LABOR

Ms. Shong. Thank you, Mr. Chairman.

I appreciate the opportunity to appear before your subcommittee today to discuss the Department of Labor's contract compliance program and some issues which have been raised before your subcommittee concerning this program.

The Office of Federal Contract Compliance Programs is, as you know, the office within the Department which has day-to-day responsibility for administration and enforcement of the three mandates which make up the contract compliance program—Executive Order 11246, section 503 of the Rehabilitation Act of 1973, and section 402 of the Vietnam Era Veterans Readjustment Assistance Act.

The Executive order prohibits Federal contractors from engaging in employment discrimination and requires that they take affirmative action to insure that applicants and employees are treated without regard to race, color, religion, sex, or national origin.

Section 503 requires Federal contractors to take affirmative action on behalf of handicapped individuals and section 402 requires Federal contractors to take affirmative action on behalf of veterans of the Vietnam era and certain disabled veterans.

Early in our administration, we looked at the enforcement of the overall program and concluded that it was not working effectively or efficiently.

Indeed, as in many other regulatory areas, we found a program which was run in an adversarial manner and which produced unnecessary paperwork, aggravation, and contempt for the entire affirmative action concept among the contractors subject to the law and among the public at large.

The program had become the target of a growing number of contractor complaints similar to those which you heard at your recent hearings.

Mr. Chairman, we have already begun to take steps to give a proper focus to contract compliance enforcement. These initiatives will eliminate the problems which have plagued the contract compliance program in the past and prevented it from becoming as effective an instrument for insuring equal employment opportunity for minorities, women, the handicapped and veterans as it might be.

Once these initiatives are fully in place, the focus of the contract compliance program will be on achieving real equal employment opportunity in the workplace—a goal which the vast majority of Government contractors support.

We have moved to renew the emphasis on voluntary compliance by contractors and have sought to eliminate the attitude of confrontation which has beset and weakened OFCCP's compliance capability. A major criticism frequently heard and often cited as the cause of compliance difficulties is OFCCP's former posture as an adversary. We intend to change this image and the practice of OFCCP to that of cooperation.

To this end, OFCCP has begun to meet with liaison committees in the regional offices, as well as the national office.

These committees are being formed at our invitation by business groups, special interest groups, and other organizations.

They have been assured of OFCCP's willingness to meet with them at their initiative to discuss issues of mutual concern. We expect these committees to provide a forum to exchange technical information and promote a greater understanding of compliance problems.

In a spirit of cooperation, we believe improved compliance with affirmative action requirements will be achieved for a greater number of contractors and employees.

We are also now taking steps to insure that all of our compliance personnel enforce the Executive order, and, indeed, all three contract compliance program mandates, in a uniform and professional manner consistent with established enforcement policies and procedures. We now have auditing and review processes in place which give us the tools to insure the desired consistency and uniformity in our compliance review activity.

In addition, we are going forward with the development and delivery of an assortment of training courses to insure that our compliance personnel have knowledge and skills in all contract compliance areas so that they can provide the type of professional enforcement that is required.

In addition to these management improvements, we are also in the process of revising the Federal regulations under the Executive order. At your hearings, you received complaints from contractors about the requirements and the process of establishing goals under the Executive order regulations and about the requirements imposed on the construction industry. Although I recognize the Senator's interest in focusing on enforcement as opposed to the regulations, I think it would be useful to have a discussion about the proposed regulations because they directly relate to problems expressed by people your heard at your hearings. I believe the existing regulations frequently compelled a focus on form rather than substance, on process rather than performance. It is those elements of form and process we have attempted to eliminate in our proposed regulations.

Our August 25 proposed revisions of the regulations would make changes which will meet some of those employer concerns you heard at your hearings. I would like to spend some time discussing these proposals.

Currently, for example, the regulations require that contractors set a goal for each job group in which minorities and women are underutilized. Underutilization is a term unique to the OFCCP regulatory program. It is not a finding of discrimination; rather it means that a contractor currently employs fewer women or minorities than reasonably might be expected by virtue of their availability for the work in question. It is the existence of underutilization that triggers the requirement to set a goal to correct that underutilization.

The OFCCP's past enforcement efforts were aimed at forcing a contractor to declare itself underutilized and to set a goal in the event of any numerical disparity between availability and existing utilization. In some cases this insistance on the part of the Agency resulted in a contractor, in effect, having to set a goal for a part of a person.

The August 25 proposed regulations provide a rational and statistically sound measure of reasonable utilization. Absent other compelling circumstances, as determined by the Director, a contractor would not be required to declare itself underutilized or to set a goal for women or minorities for job groups in which the employment of women and minorities is at least 80 percent of their respective availability. This proposal reflects the fact that, currently, availability cannot be calculated with great precision and that some leeway for purposes of goal establishment is rational given this lack of exactitude.

In this regard we are also examining the issue of availability calculation to determine if we can establish a methodology likely to reflect availability more precisely and realistically.

Realistic estimates of availability are important for a proper determination of underutilization which triggers the requirement to establish goals.

The eight-factor analysis, which was discussed at your previous hearings, is the means by which the contractor estimates availability under the current regulations. The eight factors to be computed in the analysis are designed to show such things as minority population of the labor area, the availability of women and minorities with requisite skills, the availability of transferable and promotable women and minorities, and the degree to which contractors could provide training as a means to enhance minorities' and women's access to jobs.

The eight-factor analysis has proven to be very difficult and troublesome for both contractors and OFCCP. For example, many of the factors are not easily quantified.

In addition, data regarding some of the factors are often not available in a reliable form; some are not relevant for a particular job group at a particular contractor's workplace. As a result, we have found it necessary to enter into protracted negotiations with contractors to settle how the eight factors should be considered in order to determine a realistic estimate of availability.

We requested public comment on the eight-factor analysis on July 14, and are in the process of analyzing the comments received. Once we have finished this task, we hope to propose a greatly improved means for contractors to estimate availability.

We also proposed changes on August 25 to reduce the compliance and paperwork burdens imposed on construction contractors and to enhance affirmative action efforts for women and minorities in the construction industry. In addition to a basic nondiscrimination threshold for certain construction contractors, the proposed regulations would establish a second threshold for application of construction goals and specific affirmative action steps. Under the proposed regulations, construction contractors with a contract of $50,000 or more who, during any consecutive 6 months of the year immediately preceding the award of the contract, employed craft workers for

20,000 or more hours—that is the equivalent of roughly 20 full-time employees—would be required to make every good faith effort to meet the minority and female goals and the specified affirmative action steps. The proposed regulations would also simplify and reduce from 16 to 9 the number of specified affirmative action steps. In addition, the proposed regulations would remove the existing requirement that construction contractors "document" efforts under affirmative action steps and substitute a requirement that they "be able to demonstrate" their efforts.

Nationwide goals were established for the participation of women in the construction industry for the first time in April 1978. In October 1980, OFCCP established goals for minority participation in construction for each standard metropolitan statistical area and for each outlying area. Contractors have questioned the methods used to calculate both the female and minority goals and have maintained that the goals are unrealistic and impossible for them to meet.

Although we have not as yet proposed any changes in this facet of the construction industry requirements, we requested public comments relating to minority and women's construction goals on July 14.

We are currently reviewing the comments we have received on this issue to determine what, if any, changes may be needed.

Mr. Chairman, let me briefly summarize what OFCCP is doing. Many of the current regulations and previous enforcement strategies not only failed to further the objective of jobs but, in fact, compelled a focus on form rather than substance.

Our regulatory proposals and management initiatives are designed specifically to eliminate those elements of concentration on process and to return us to a focus on performance.

Everything OFCCP has done, in this administration, and everything it plans to do is designed to streamline the burden of demonstrating and measuring compliance so that contractors can help fulfill the national goal of full participation of all peoples in all segments of economic activity on the basis of availability, individual interest and merit, and not on account of handicap, race, color, religion, sex, national origin, or veteran status.

Certainly there have been changes in the manner in which OFCCP operates. Where we found a regulation with a focus on compliance process rather than on results, where we found a system without rationality, where we found an enforcement strategy based on sentiment rather than law and reason, we are proposing changes. But one thing that will not change is our commitment to the citizens of this country to eliminate unlawful discrimination from the workplace.

This concludes my prepared testimony. I would be pleased to respond to your questions.

Senator PERCY. Thank you very much. Is there anything you would like to add at this time to summarize for the committee any further comments you would have on the philosophy of enforcement, or describe what steps you plan to take to insure these directions are understood by and implemented by your own field personnel?

Ms. SHONG. Thank you for the opportunity to respond to that question, Mr. Percy.

As you perhaps know, I come from the private sector. Prior to my appointment to this position I spent 8 years in working in EEO/Affirmative Action, writing affirmative action plans, doing eight-factor analysis; so I am well aware of some of the problems that both the agency and contractors experience. I believe some of the problems grow out of the agency's previous enforcement philosophy of "social engineering." I personally am vigorously committed to equality of opportunity in the workplace and to affirmative action, but I believe that the agency's mission is law enforcement and not "social engineering."

I have communicated in public speeches across the United States in visits to 8 of my 10 regions so far and in meetings with all of my senior managers and many of the middle-level managers that I will not tolerate a compliance officer substituting his or her personal standard of fairness for that which is mandated by law.

I believe that the communication that I have made to my field personnel is clear—that I expect them to follow policies and directives from the national office. We have, in fact, created a special task force to review both the uniformity and consistency with which field people are carrying out these policies, as well as to review proposed conciliation agreements for the protection of both contractors and the protected groups.

Senator PERCY. Thank you very much. I wonder if you would care to have Mr. Jack Bluestein join you at the table now?

Ms. SHONG. Thank you. That is kind of you to offer, sir.

Senator PERCY. We are happy to have you, Mr. Bluestein.

Ms. SHONG. Mr. Bluestein is currently Acting Chief of Field Operations for the agency.

Senator PERCY. Delighted to have you. I am a strong supporter of employment opportunity, long preceding my service in the U.S. Senate. I have not only felt it is the right thing to do, but it is the best thing for our country, the best thing for the strength of any particular business. I had this rather dramatically demonstrated to me at at time when I felt, as I took over the presidency and chief executive officership of Bell & Howell on January 5, 1949—a long time ago. We did not have a single black employee in that company, 1,300 employees, and I just couldn't figure out why we didn't. I knew the incident that had arisen during the war that caused a setback, but we just had not moved since then. So I called the 500 supervisors together and said this is going to be the policy of the company and we started an affirmative action program.

Our housing segregation situation, and economic problems had created the problem; we didn't really reach out. That was in a recession. At a time when labor was really scarce, when we suddenly were inundated with contracts, we were seeking and looking for people and everyone else was looking for people, the blacks we had in our company, the Hispanics we had in our company really reached out to help us gain employment. We tapped a market that was still untapped and we benefitted I don't know how much by keeping up with our contracts, filling our needs, having stock on hand at a time when goods were scarce and short in a boom period.

That was the greatest demonstration to me. It was the best business thing to do. We did have more women executives in our company that any company of our size in the United States and we were cited by professional women's organizations for that. It has been very easy since I have been down here to do the same thing in the past 15 years. I am very proud of the fact my chief of staff is an outstanding lawyer and woman. She won that job strictly because of merit, and we are proud to have you here today.

So I come to this conclusion very deeply, particularly with my responsibilities in the Senate, I think it is hypocritical for this country to be preaching equal employment opportunities to countries that have to bring half of their population into the economic mainstream and not leave them out, otherwise the development program just simply doesn't work for those countries, unless we really have programs that reach out to women, reach out to minorities and fully give them the opportunities that should exist.

In the 15 years since the Executive order setting up the program, there have been really major changes in the work force in the United States. There is much greater participation on the part of women and minorities, but we still have a long, long way to go. We are far from perfect and far from achieving even our minimal—by today's standards—achievement that we should have achieved. The OFCCP program has played an important part in this program in the past, and I am confident it will continue to do so.

In the hearings we held in Illinois, witnesses spoke about the importance of the agency's mission. Let me focus on, again, Decatur and the Archer Daniels Midland Co. who said the company has found the OFCCP goals laudable because, and these are the words of our own witness, his company:

> Wants to employ the best possible people, regardless of race, sex, creed, or handicap, because that is the best way for our company to be successful and profitable. In short, it just does not make good business sense to erect artificial barriers against the employment of qualified people. We need such people.

Again, even the handicapped. This is the year of the handicapped. That is why we have had so many around in our corridors in recent weeks. Our goal was always 5 percent of the company. Even when we reached a level of employment of 14,000, we still tried for that goal, 5 percent of physically and mentally handicapped. We figured we could find jobs that could be performed by those people. Always, again, it proved in our records, better attendance, pride in their work, and it lifted the morale in other people because they assisted to help the handicapped.

In the end, it proved to be a good thing for the company. Archer Daniels' experience is the same as Bell & Howell's.

Your agency really doesn't come to disagreement about your basic mandate but the way that mandate was carried out. When they testified before the subcommittee this summer, they said three of their facilities have been under review for a year. Each one was in the same area, but each investigation was started by different investigators.

They laid heavy demands of paperwork on them and had them redoing work, even coming in on holidays to copy documents. Resolution of the issues was delayed for months on end.

First the question, is it normal for OFCCP reviews to go on this way for more than a year?

Ms. SHONG. No. Mr. Chairman, it is not normal.

Let me first begin by saying I feel a keen sense of responsibility to restrain my comments to information that is already in the public record because there are certain of these reviews still in progress.

But let me comment generally that this was a rather unique case in that we were doing three reviews concurrently because the company had submitted three written affirmative action plans.

The length of time it takes to accomplish a review varies quite significantly depending on the industry we are looking at. Some reviews are considerably more complex than others. Always a review takes longer the more employees in the contractor's work force. We did have some scheduling problems to accommodate both our own staffing problems as well as the contractor's request to have attorneys present. We have a project underway now to examine all our compliance reviews that have been open for an extended period of time and I will shortly be issuing instructions to the field to complete and/or close those reviews or explain why.

Senator PERCY. Can you comment on any further ways we might devise to shorten the process or make it more efficient?

Ms. SHONG. I think generally this administration's philosophy in the Department of Labor is to focus on bottom line, to focus on performance rather than the process of demonstrating compliance with every regulation, with the dotting of "i's" and the crossing of "t's". That should shorten the compliance review. We have proposed, for example, to eliminate the implementation provisions of the regulations, to get out of the business of being partners in personnel with contractors to insist they achieve results but to allow them flexibility for the manner in which they achieve them, but accountability for those results. So I do expect we will be able to shorten generally the amount of time in compliance reviews.

Senator PERCY. I used the reference to the judicial process and we do recognize review in, say, appellate courts. It is confusing sometimes when a contractor deals with local or regional agencies and they reach a conclusion and it comes to the point of settlement and then have the whole process turned over by the same Federal agency and they go back to the drawing board to do it all over again because it has been overturned by the next level up.

What can be done to create confidence that once an agreement has been reached, it is not going to be overturned and go back to the drawing board to start all over again?

Ms. SHONG. I appreciate the frustration of contractors and even of my own agency personnel with that kind of situation. I don't know a way to remedy it entirely without giving up something else that is equally important to the program and that is uniformity and consistency within regions and among regions, particularly for contractors who have more than one facility, in more than one region.

At this point, especially now in the process of transition and changes in policies, I know of only one way to achieve or have a hope of achieving that consistency and that is for there to be some higher level of review.

We do tell contractors at the time a conciliation agreement is being negotiated that the area office director may not bind the agency, these are discussion points and will have to be approved by the region.

In addition, the regulations provide a 45-day period for the director to reject conciliation agreements already signed by the assistant regional administrator.

We have in our proposed regulatory revision proposed to eliminate that 45-day period. I believe any coordination with me ought to occur prior to the contractor being presented with a proposed conciliation agreement.

We recognize this problem and are working on ways to achieve a balance with people who thought they have an agreement at the time they are ready to sign and still providing enough protection for both the contractor and the affected groups with management review.

Senator PERCY. This subcommittee was told that the OFCCP's Chicago office had taken a very tough line in its reviews of construction contractors. They regularly require contractors to enter into conciliation agreements and letters of commitment which have detailed requirements for documentation.

Now a conciliation agreement is in the first step of debarring the contractor from Federal contracts. The director of OFCCP's Chicago office told my staff that these actions are a routine part of every review.

Could you explain to the subcommittee how that process works and why the agency believes there is a need for such a uniformly uncompromising approach?

Ms. SHONG. The agency no longer believes there is a need for uncompromising approach. However, we are compelled because of a court order, in a case called *Castillo* v. *Usery,* to extract from contractors conciliation agreements, short of sanctions, including debarment, in several instances: First, where a contractor has filed to develop a written AAP in compliance with regulations; second, where the contractor materially deviated or breached its former commitments or third, where the current affirmative action plan is seriously inadequate. That court order requires that in those circumstances the contractor must remedy the past deficiencies in addition to agreeing to prospective commitments and relief.

The agency's interpretation of that court order should be reexamined and we intend to do so to determine what flexibility that court order gives us insofar as at least the mandatory language that currently is in conciliation agreements.

Senator PERCY. There is, of course, another side to the issue. There had been real problems of discrimination which the OFCCP program was really meant to correct in the first instance when it was set up.

In the past the construction industry I think did notably discriminate—it was looked upon as not women's work.

We laugh now as we look back on the hangups. You can go over to the Senate Floor today and find that probably half of the Senate pages are women, but that is only in the last 10 years. For 190 years, we never had a woman page in the United States Senate. It was unthinkable that a woman could do that kind of work. I don't know what kind of work they did that women couldn't do. We ridiculed the Rules Committee as it continued in its male chauvinist attitude to just pretend this is work that should be only exclusively provided for young men. But that is so typical. We still have yet to get on an airplane with a woman avaiting. You get women hostesses. And the number of doctors and lawyers is increasing.

It is only in recent years that we really have tried to push this, we have been able to break through.

How can we, and how can you, make sure construction contractors are doing everything that should be done to provide jobs for women and minorities in the Chicago area and other metropolitan areas of the country?

Ms. SHONG. One of the ways we can insure women, in fact, are being assured equal opportunity in construction trades in particular is to offer technical assistance to construction contractors in addition to undertaking compliance reviews of a contract of a certain size. We also have invited, as I indicated in my prepared remarks, industry, including the construction trades, to develop liaison committees. We hope that by working with these liaison committees across the United States, we, the regulators, can get a better understanding of what the real problems are of a construction contractor and at the same time we can assist the contractor in recruiting women. My experience is that if you only look for women and minorities in the same place you look for white males you are likely not to find them. So we need to explore with contractors and with constituency groups recruitment resources and means of dealing with hiring arrangements, et cetera, that will produce a set of interested qualified women for those jobs and make sure the contractors seriously consider those applicants that are qualified.

Senator PERCY. Could you tell us how your office exercises supervision over the activities of officials in the regional and field offices?

Ms. SHONG. As Director of the OFCCP, I share reporting authority and responsibility with the regional administrators in each of the 10 regions. The regional administrators of the Employment Standards Administration are physically present in each region and are responsible for many of the day-to-day administrative and staffing decisions.

I am responsible for programmatic decisions so there is a presence both in Washington and in each region of senior management.

We have sent memoranda and the directives to the field redesignating and delegating authority. I am examining those memoranda right now to be sure that has been done in the most effective way possible to achieve consistency and also a certain degree of control. We do have quality audits of compliance reviews that are undertaken by various branches of the Department of Labor as well as within my own office. That unit reports directly to me. We have regular meetings with our assistant regional administrators. I was fortunate, for example, on the very day of my appointment to open a quarterly conference of the ARA's in Denver so all of them had an opportunity to hear from me what our new policies were.

We think this new regulation is particularly important in light of changing policies.

Senator PERCY. My final question to you—considering the bottom line is jobs, and that is what our goal is, to see that minorities, handicapped, women are provided jobs and have the opportunity for jobs—could you give us anything further as to how you are carrying out and implementing that goal and what you see ahead?

Are you optimistic about the future?

Ms. SHONG. I could not agree with you more, Mr. Chairman, that the mission of this agency is jobs. One of the first questions I asked in the first week I was present in Washington is whether or not the agency collected or made use of data or the impact the agency has on jobs; how many goals are set for women and minorities, how many goals are met and how many are projected as a result of our compliance reviews. I discovered that in the past, at least, the agency had not analyzed that information. It is collected. We are in the process now of trying to find out historically what our impact has been and to use that as a standard for measuring our performance rather than measuring our performance in negative ways, in ways that perhaps reveal that affirmative action hasn't worked, things like sanctions and back pay. But to measure our impact on the workers of America in terms of the number of opportunities that are created and afforded as a result of our compliance activity. I hope very soon to develop a process for calculating exactly that impact.

Senator PERCY. I thank you very much, indeed.

We thank you for your obvious dedication to this goal. It is very much appreciated. I do want to thank everyone who has testified for their cooperation today and over the past few months as we have discussed these cases with them.

These four agencies are, by no means, the only ones whose enforcement procedures came under fire during our hearings in Illinois.

In these and other cases, I have asked the staff to follow up directly with the top agency facilities and with the Vice President's task force to make sure any problems are adequately addressed.

I want to call attention to the need of the Federal Government to take action to relieve some of the unnecessary duplication that might exist in the enforcement of Federal and State rules.

In Illinois, the State department of commerce and community affairs has established a regulatory alert to notify businesses of State regulatory changes.

I urge the Vice President's task force to use this project as a case study of regulatory reform work at the State level.

Finally, the people behind the desk have done an awful lot of work, as they generally have through the years. In this case, Dave Nichols, Rob Portman, Lynn Lerish, Elaina Newport, Ken Ackerman, and Bill Strauss of the subcommittee.

They deserve tremendous credit for the devotion they have had. The goal they have been seeking has been very well summed up in your final statements. This is a goal this committee shares, and we look forward to working closely with you and our other witnesses and those that were interested in coming today to implement these goals.

We do want to thank everyone in Illinois who participates because this has been a microcosm. We have taken this as an example of the kind of treatment, the kind of complaints, the kinds of concerns that are evidenced by a State that is a cross section of our urban, suburban, and rural concerns, both in agriculture and nonagriculture.

What I think has been displayed in this staff report and in the course of our hearings is, I think, not dissimilar to experiences that businesses and individuals have found across the country. And we hope to use this as a case history of how we can identify the problems and then go about resolving them and making Government more responsive, more effective, more cost-effective and also to be determined to change the goals to make the workplace more efficient, safer, more effective, to make us a low-cost producer of high quality products and have a full work force utilizing every facility, every person and human resource we have in this country.

The underlying part of the President's program is to develop a strong, strong dynamic economy. There are a multiplicity of ways in which we can do it.

The Government should be a help in moving us toward that goal, not a hindrance, not a barrier to overcome.

It is in that spirit of partnership that we close these meetings; we appreciate your testimony very much indeed.

[Whereupon, at 11:40 a.m., the subcommittee recessed, to reconvene at the call of the Chair.]

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

U.S. Department of Labor

Assistant Secretary for
Occupational Safety and Health
Washington, D.C. 20210

OSHA Instruction CPL 2.25B
OCT 01 1981
Office of Compliance Programming

Subject: Scheduling System for Programmed Inspections

A. Purpose. This instruction describes the steps to be followed and the criteria to be applied in selecting workplace establishments for programmed inspection.

B. Scope. This instruction applies OSHA-wide.

C. References.

1. OSHA Instruction CPL 2.45, Field Operations Manual, Chapter IV--Compliance Programming, and Chapter V--General Inspection Procedures, September 15, 1980.
2. OSHA Instruction CPL 2-2.20, Industrial Hygiene Field Operations Manual, April 2, 1979.
3. OSHA Instruction PAE 1.1A, October 1, 1981.
4. OSHA Instruction CPL 2.3, September 18, 1973.
5. OSHA Instruction STP 2-1.97, August 15, 1979.
6. OSHA Instruction ADM 1-1.12, October 1, 1981.

D. Cancellation. OSHA Instruction CPL 2.25A, November 1,1980, is canceled.

E. Background. For the purpose of this instruction, OSHA inspections/investigations may be divided into two broad types:

1. Unprogrammed. Inspections in which alleged hazardous working conditions have been identified at a specific establishment are unprogrammed.

2. Programmed. Inspections of establishments which have been selected based upon objective criteria. The establishments are selected according to the Planning Guide for safety and health, or special or local emphasis programs. Certain types of inspections, such as migrant housing, have also been designated as programmed.

3. OSHA Policy. It is OSHA policy that inspections conducted as programmed inspections be in the "high rate" sectors of employment.

   a. In safety, the agency considers a "high rate" industry to be one which is higher than private sector industry in general in any one or more of the occupational injury incidence rates published by BLS.

   b. Target health employments are those determined pursuant to the criteria set forth in Appendix A.

   c. For Planning Guide purposes high rate General Industry, Construction and Maritime are all considered to be categories of high rate employment. (See Appendix B.)

   d. Other specific employments, such as logging (SIC 2411) and oil and gas extraction (SIC's 1300-99), are also high rate employments and are frequently listed as local emphasis programs.

4. Directives Explanation.

   a. On December 6, 1978, the agency issued OSHA Instruction CPL 2.25 in order to set forth the criteria to be applied by Area Offices in selecting establishments for programmed inspections. That instruction sought to carry out OSHA's policy that resources be allocated so as to achieve wide dispersion of inspection activity and enforcement penetration into many different types of industries and employments.

b. OSHA Instruction CPL 2.25A replaced CPL 2.25 on November 1, 1980. This new instruction simplified the scheduling procedures in order to ease the administrative burden on Area Offices while continuing to implement the policy of CPL 2.25.

c. This instruction replaces CPL 2.25A. Insofar as it applies to programmed safety inspections in general industry, it changes OSHA's previous policy of wide dispersion of inspection activity to one that concentrates resources in those industries with the highest lost workday injury rates (safety) and with the greatest potential for health problems.

d. All programmed inspections shall be scheduled and conducted within the guidelines and priorities set forth in the Field Operations Manual, the Industrial Hygiene Field Operations Manual, OSHA Instruction PAE 1.1A, including the current Inspection Planning Guide, and this instruction.

F. Action. OSHA Regional Administrators shall assure that Area Directors follow the guidelines and procedures set forth in this instruction when selecting and scheduling establishments for general schedule safety and health inspection.

G. Federal Program Change. This instruction describes a Federal program change which affects State programs. Each Regional Administrator shall:

1. Ensure that this change is forwarded to each State designee.

2. Explain the technical content of the change to the State designee as requested.

3. Advise each State designee that listings of industries and establishments comparable to those provided for OSHA Area Offices will be provided to the State.

4. Ensure that State designees are asked to acknowledge receipt of this Federal program change, in writing, within 30 days of notification, to the Regional Administrator.

   a. With respect to Paragraphs I.3 (page 15, Construction), I.4 (page 20, Maritime) and Appendices A and B, (which describe procedures for identifying industries), each State is expected to adopt the Federal procedures (including the lists of high rate industries and establishments for safety and for health which will be issued annually) or to provide alternative procedures which are as effective. These procedures, with the exception of Appendix B (Safety), are identical to those contained in CPL 2.25A, November 1, 1980, which previously transmitted these as Federal program changes. If the State intends to follow these updated Federal procedures, only a written indication of that intent is required. If the State chooses to operate under alternative systems, notice of this intent must be provided within 30 days of receipt of this instruction with plan supplements and/or appropriate amendments to previously submitted supplements to follow. Each State has up to 6 months to adopt the Federal procedures or provide acceptable alternative systems, but is encouraged to accomplish this action with the shortest time frame possible. (If a State has already submitted acceptable notice of intent and, where required, plan supplements with respect to the contents of Appendix A (Health), I.3 (Construction) and I.4 (Maritime), the State need not repeat these steps. Because Appendix B has been modified, all States must respond.)

b. With respect to section I.5, Special Emphasis Programs, each State should, in conjunction with its submission in response to G.4.a above, provide a description of all State-initiated Special Emphasis Programs.

c. With respect to section I.1.e, Establishment Records Check, and Appendix D, "Procedures for Determining Establishment Lost Workday Injury Rate," of this instruction (which establish a policy that comprehensive programmed safety inspections will be conducted only in establishments with lost workday injury rates at or above the national average for manufacturing), and with respect to the remainder of this instruction (which establishes a methodology for developing inspection plans from the list of establishments in high rate industries and other sources which will concentrate programmed inspections in those industries with the highest experience/potential for injury/illness), each State is expected to adopt the Federal procedure or an "at least as effective as" alternative. If the State plans to adopt the Federal procedure, only a written indication of that intent is required. If the State chooses to operate under an alternative system, notice of its intent must be provided within 30 days of receipt of this instruction with a plan change supplement to follow. Each State has up to 6 months to adopt the Federal procedure or provide an acceptable alternative but is encouraged to accomplish this action within the shortest time frame possible.

5. Review policies, instructions, and guidelines issued by the State to determine that this change has been communicated to State program personnel. Routine monitoring activities shall be used to determine if this change has been implemented.

H. Description. Both programmed safety inspections and programmed health inspections are scheduled based upon a multiple-step process.

1. The initial selection of a particular category of employment (e.g., high rate general industry, construction, maritime, target health,) is made in accordance with the annual Field Operations Program Plan projections which are made at the Area Office level, reviewed at the Regional and National Office levels and approved by the Assistant Secretary.

2. Within a category, establishments are selected for inspection from an establishment list for that category and placed in an inspection cycle. For the General Industry (safety) and target health categories, establishment lists will ordinarily be provided by the National Office and corrected as necessary by the Area Offices.

3. .Where no list is provided by the National Office (e.g., construction and maritime) the Area Director must compile an establishment list considering all establishments within the area using the best available information (manufacturing directories, Dodge Reports, commercial telephone listings, local knowledge etc.).

4. Within an inspection cycle, establishments may be inspected in any order that makes efficient use of resources; but all establishments in a cycle must be inspected, with only limited exceptions, before a new cycle is begun.

I. Guidelines and Procedures. A programmed inspection should generally be a comprehensive inspection of the establishment with the exception of low hazard areas, such as office space, but may be limited as necessary in view of resource availability and other enforcement priorities. Programmed inspections should be conducted by both safety and health personnel whenever resources are available and it is likely, based on experience in inspecting similar workplaces, that both safety hazards and health hazards may exist to a significant degree. For example, an inspection scheduled as "target health" may include safety. If an inspection is begun as safety only, or health only, but the CSHO determines during the course of the inspection that the inspection should be expanded, the CSHO should contact the Area Director or appropriate supervisor. A decision will then be made on the basis of the information available whether the inspection should be expanded and to what extent. A decision may also be made, based on resource availability, to handle the CSHO's information as a referral for inspection at a later time.

1. Inspection Scheduling for General Industry (Safety).

   a. Establishment List. A Statewide Industry Ranking Report listing 4 digit SIC's according to lost workday injury rates will be provided when available by the National Office for each Area Office. (See Appendix B.) The National Office will also provide a list of establishments, when available, within the Area and District Office jurisdiction for each SIC on the Statewide Industry Ranking Report.

      (1) Establishments showing 10 or fewer employees will have been deleted by the National Office from the establishment list provided to the Area Director.

      (2) Prior to use of the establishment list for scheduling purposes, appropriate additions and deletions shall be made by the Area Director.

(a) Additions.

Code	Description
AA	Establishment is believed to be within a SIC on the Statewide Industry Ranking Report but does not appear on the establishment list provided. Additions shall be placed on the proper SIC list in accordance with the listing criterion used, e.g., alphabetically by size, etc.
BB	Establishment has more than 10 employees but was erroneously removed by the National Office from the list.

(b) Deletions.

Code	Description
A	No longer in business or no longer in Area Office area.
B	Nonplant corporate office or headquarters.
C	Misclassified and the correct SIC is not on the high rate list.
D	Substantially complete safety inspection has been conducted within previous fiscal year with no serious violations cited.

E Establishment has 10 or fewer employees.

F Other reasons for deletion not listed above. Approval for deletion shall be requested from the Regional Administrator and approved by the Director of Field Coordination.

NOTE: The Area Director will make the appropriate deletions at the same time additions are made.

(c) After all appropriate additions and deletions have been made, establishments on the list shall be numbered consecutively beginning with number 1. Deletions will be skipped in numbering the list.

b. Inspection Cycles.

(1) Establish the inspection register; i.e., determine which of the establishments on the establishment list will be scheduled for inspection in a fiscal year. This is done by taking the number of general industry safety inspections projected on the OSHA-146 Form for the fiscal year and doubling it. The resulting number will be the number of establishments selected in consecutive order from the establishment list to form the inspection register.

NOTE: The OSHA-146 projection is doubled because it is estimated that 50 percent of the establishments scheduled for inspection may not be inspected. For example, the establishment has 10 or fewer employees, is no longer in business, or has a lost workday injury rate below the national average.

EXAMPLE:
The Area Office projects 178 programmed inspections in general industry (safety). The number of establishments on the inspection register would be 356 (178 x 2=356).

(2) The inspection register of establishments to be inspected during the fiscal year will be divided into two cycles, each consisting of one-half of the total number of establishments contained on the register. The first half will be designated as cycle one and the remaining half as cycle two.

c. Inspection Scheduling.

(1) Within a cycle establishments may be selected and inspected in any order that makes efficient use of available resources.

(2) Each inspection cycle will be completed before another cycle is begun. The only exceptions are as follows:

(a) An establishment may be carried over to another cycle if the establishment is not operating normally because of strikes, seasonal fluctuations, or other factors.

(b) An establishment may be carried over to another cycle if necessary equipment or personnel with necessary experience and qualifications to perform the inspection are not presently available.

(c) An establishment may be carried over to another cycle if it is the last remaining establishment in a cycle but its inspection would require travel in excess of 50 miles and cannot be combined with other inspection activity.

(d) An establishment may be carried over to another cycle if the inspection has not yet been completed due to the employer's refusal to allow the inspection.

(e) Approval for carrying over an establishment for reasons not listed above must be requested from the Regional Administrator and approved by the Director of Field Coordination.

(3) As previously described, the two inspection cycles are established with double the number of inspections projected at the beginning

of the Fiscal Year. The number of inspections actually performed, however, will depend on such factors as the results of establishment injury record reviews, staffing, unprogrammed inspection activity and special programs. If at the end of the Fiscal Year a cycle has not begun, it is simply disregarded. If all establishments in the two cycles are inspected before the end of the Fiscal Year, a third cycle may be prepared by extending the inspection register to the next group of consecutively numbered establishments on the list. The number of establishments on the extended inspection register will be equal to double the additional inspections the Area office projects it can conduct prior to the end of the Fiscal Year.

(4) In the event it appears likely that the Area Office will inspect all eligible establishments on the list within the Fiscal Year, the Area Director may request a supplemental list from the Director of Field Coordination.

(5) Any cycle begun but not yet completed at the end of the Fiscal Year shall be completed, subject to the exceptions set forth in paragraph I.1.c. (2), before beginning the new Fiscal Year inspection cycles. The number of inspections yet to be completed shall be taken into account in setting the new Fiscal Year inspection cycles.

EXAMPLE:

At the end of the Fiscal Year there are 15 establishments remaining in the uncompleted cycle. Assuming the projected number of inspections for the new Fiscal Year is 140, the number of inspections in each of the new Fiscal Year cycles is determined by the following computation:

$$140 \times 2 = 280$$
$$280 - 15 = \frac{265}{2}$$
$$= 132.5 \text{ (rounded to 133)}$$

d. Deletions and Additions.

(1) An establishment shall be deleted from an inspection cycle in which it appears whenever one of the criteria for deletion (subparagraph I.1.a(2)(b), page 8) becomes applicable. For example, an establishment may receive a complete inspection during the Fiscal Year as a result of an employee complaint.

(2) An establishment may not be added to the register after the first inspection has begun. However, a record of such establishments shall be kept for inclusion on the establishment list for the next Fiscal Year.

(3) Where it is learned only after the compliance officer has arrived at the establishment that one of the criteria for deletion applies, the inspection shall not be conducted (or continued

if already begun.) Citations for the completed portion of the inspection shall still be issued.

e. Establishment Records Check. CSHO's shall follow the procedures outlined in Appendix D for determining an establishment's lost workday injury (LWDI) rate at all establishments scheduled for programmed safety inspections, including those for which warrants have been served. The establishment's LWDI rate will be compared to the most recently published national rate for manufacturing, using the national rate and criteria specified in Appendix D to determine whether or not an inspection will be conducted.

2. Inspection Scheduling for General Industry (Health).

a. Establishment List. A statewide Industry Ranking list of 4-digit SIC's with high potential employee exposures to dangerous substances will be provided by the National Office. (See Appendix A.) The National Office will also provide a list of establishments within the Area Office for each SIC on the statewide Industry Ranking list. Prior to use of the establishment list for scheduling purposes, the list shall be corrected by the Area Director by making additions and deletions as outlined in I.1.a.(2)(a) and (b).

NOTE: In the description Code D read "health" in place of "safety".

b. Inspection Cycles. Health inspection cycles will be prepared following the guidelines in I.1.b (page 8).

c. Inspection Scheduling. Health scheduling will be conducted as outlined for safety in I.1.c. (page 10) and I.1.d (page 13).

NOTE: Results of injury and illness records review will not be used to exempt an establishment from a health inspection.

d. Health Construction Inspections. No separate scheduling method is applied for programmed construction health inspections. Rather, the Area Director shall determine which construction inspections should be conducted as joint inspections because serious health hazards may exist at the worksite.

3. Inspection Scheduling for Construction.

a. Worksite List. Due to the mobility of the construction industry, the transitory nature of construction worksites, and the fact that construction worksites frequently involve more than one construction employer, a list of construction worksites, rather than construction employers, will be prepared on a quarterly basis by the Area Director.

(1) A list of construction worksites that are or will be active during the forthcoming quarter will be prepared using Dodge Reports, local building permits, and reports of construction activity as referred by agency personnel or members of the public. The list of worksites shall include an estimate, based on local knowledge and experience, of the number of construction employers likely to be on the site during the forthcoming quarter.

(2) Worksites which have received a substantially completed inspection within the preceding quarter shall be deleted from the list.

(3) After the list has been prepared and corrected, as appropriate, the worksites on the corrected list shall

be numbered consecutively beginning with the number 1. An example of a construction worksite list prepared as outlined above is as follows:

Sequence Number	Worksite Location	Employers (Estimated)
1	Arkansas Nuclear 1	16
2	Landover Highrise	5
3	Highway 25 Bridge #13	3
4	Richenbacher Hospital	8
5	Parkway Fire Station	2
6	Peanuts Oliver St. Store	8
Inspected/date	Little Missouri River Dam	
7	Soft Wire Mfg. Bldg.	4

b. Quarterly Inspection Cycle. Using the number of construction inspections projected for the applicable quarter on the OSHA-146 Form, prepare the quarterly inspection cycle as follows:

(1) Apply the random number table (Appendix C) to the worksite list which has been prepared as directed in I.3.a.

(2) Select worksite in the order prescribed by the random numbers until the number of inspections estimated (i.e., total number of employers) at least equals the number of inspections projected for the applicable quarter.

EXAMPLE:

Assume 32 construction inspections are projected for the quarter. Application of a random number table results in the following potential order:

Number	Worksite Location	Employers (Estimated)
7	Soft Wire Mfg. Bldg.	4
1	Arkansas Nuclear 1	16
4	Richenbacher Hospital	8
2	Landover Highrise	5
6	Peanuts Oliver St. Store	8
5	Parkway Fire Station	2
3	Highway 25 Bridge #13	3

NOTE: The quarterly inspection cycle will therefore consist of the first four worksites (which yield a total of 33 employers.)

c. Inspection Scheduling.

(1) Within a cycle establishments may be selected and inspected in any order that makes efficient use of available resources.

(2) Each inspection cycle will be completed before the next quarterly cycle is begun. The only exceptions are as follows:

(a) A worksite may be carried over to the next cycle if the establishment is not operating normally because of strikes, weather, or other factors.

(b) A worksite may be carried over to the next cycle if necessary equipment or experience and qualifications to perform the inspection are not presently available.

(c) A worksite may be carried over to the next cycle if it is the last remaining worksite in the cycle but its inspection would require travel in excess of 50 miles and cannot be combined with other inspection activity.

(d) A worksite may be carried over to the next cycle if the inspection cannot be completed due to the employer's refusal to allow it.

(e) Approval for carrying over an establishment for reasons not listed above must be requested from the Regional Administrator and approved by the Director of Field Coordination.

(3) At the end of a Fiscal Year quarter, the number of inspections yet to be completed in that quarterly cycle shall be taken into account in the new quarterly inspection cycle.

EXAMPLE:

At the end of the quarter an Area Office has two worksites left to inspect with an estimated total of five employers. If the projected number of construction inspections for the new quarter is 40, the new quarterly establishment list will be used to select worksites yielding at least 35 (rather than 40) inspections (i.e., employers).

(4) If all worksites in the quarterly cycle have been inspected but fewer employers are inspected than originally predicted,

additional worksites shall be selected from the worksite list, using the order prescribed by the random numbers, until the additional numbers of inspections (i.e., employers) at least equals the number of inspections still needed to meet the number of inspections projected for the quarter.

EXAMPLE:

Assume the same facts as given in the example under paragraph I.3. b.(2) (page 17).

Assume further that inspections of the four worksites comprising the inspection cycle result in inspections of only 25 employers rather than the 33 predicted. Therefore, the next two worksites (i.e., Parkway Fire Station (two employers) and Peanuts Oliver St. Store (eight employers)) will be added to the cycle.

(5) Similarly, if the Area Office is able to do more programmed construction inspections than the number of inspections projected at the beginning of the quarter, additional worksites may be scheduled for inspection in the order prescribed by the random numbers.

(6) Each worksite will be inspected primarily in those areas where significant numbers of injuries occur; such as, falls from elevations, working around or with equipment, handling and storage of materials, working near electrical transmission lines, etc.

d. Deletions and Additions.

(1) If substantially all construction activity at a worksite in the inspection cycle ceases before the inspec-

tion can be made, that worksite will be deleted from the inspection cycle. A worksite shall similarly be deleted if for any other reason it becomes ineligible, e.g., where a substantially complete inspection of the worksite has been conducted as a result of a complaint investigation.

(2) A worksite which becomes known to the Area Director only after the quarterly inspection cycle has been prepared and which will likely end prior to the next quarter, shall receive a programmed inspection only if appropriate under an approved special emphasis program (e.g., a local emphasis program in trenching).

NOTE: This paragraph does not preclude unprogrammed inspections conducted in response to specific evidence of conditions involving imminent danger or serious hazards at a worksite, such as those obtained through direct observations. These instances will be evaluated by the Area Director and, if appropriate, investigated as a referral inspection. The referral will be logged on the OSHA-90.

4. Inspection Scheduling for Maritime. The maritime industry is made up of several industrial activities and due to the unique differences among the industries, several scheduling methods are necessary. Consequently, maritime inspections will be scheduled either as local emphasis programs as outlined in I.5. (page 26), or as follows:

a. Maritime Industries Scheduled With General Industry (Safety) Inspections. All maritime establishments provided for each Area Office will be scheduled and inspected with General Industry as outlined in I.1. of this instruction.

b. Maritime Inspections Scheduled With Construction. Maritime Construction will be scheduled with other construction inspections as outlined in I.3 of the instruction.

c. Water Transportation Services. Due to the unpredictability of longshoring employer (stevedore) activities, and the fact that Port Areas frequently involve more than one employer, a list of Port Areas rather than employers will be prepared on a quarterly basis by the Area Director. (See OSHA Instruction CPL 2.3.)

(1) A list of Port Areas for the forthcoming quarter will be prepared using OSHA inspection history, local knowledge and experience, and company schedules. The list of Port Areas shall include an estimate based on local knowledge and experience of the number of longshoring employers (stevedores) likely to be at the Port Area during the forthcoming quarter.

(2) Port Areas which have received a substantially complete inspection within the preceding quarter shall be deleted from the list.

(3) After the list has been prepared and corrected as appropriate, the Port Areas on the corrected list shall be numbered consecutively beginning with number 1. An example of Port Areas prepared as outlined above is as follows:

Sequence Number	Port Area	Longshoring Employers (Estimated)
1	ABC	2
2	DEF	2
3	GHI	1
Inspected/date	JKL	3
4	MNO	1
5	PQR	4
6	STU	3
7	VWX	2
8	Z	5

(4) Quarterly Inspection Cycle. Using the number of longshoring inspections projected for the applicable quarter on the OSHA-146 Form, prepare the quarterly inspection cycle as follows:

(a) Apply the random number table (Appendix C) to the Port Area list which has been prepared as directed in I.4.c (page 21).

(b) Select Port Areas in the order prescribed by the random numbers until the number of inspections estimated (i.e., total number of employers) at least equals the number of inspections projected for the applicable quarter.

EXAMPLE:

Assume eight Longshoring inspections are projected for the quarter. Application of a random number table results in the following potential order:

Number	Port Area	Employers
3	GHI	1
7	VWX	2
1	ABC	2
8	Z	3
2	DEF	2
4	MNO	1
6	STU	3
5	POR	3

NOTE: The quarterly inspection cycle will therefore consist of the first 4 Port Areas which yield a total of 8 employers.

(5) Inspection Scheduling.

(a) Within a cycle Port Areas may be selected and inspected in any order that makes efficient use of available resources.

(b) Each inspection cycle will be completed before the next quarterly cycle is begun. The only exceptions are as follows:

1 A Port Area may be carried over to the next cycle if the establishment is not operating normally because of strikes, no vessels being worked at that Port Area, or other factors.

2 A Port Area may be carried over to the next cycle if necessary equipment or personnel with necessary experience and qualifications to perform the inspection are not presently available.

3 A Port Area may be carried over if its inspection would require travel in excess of 50 miles and cannot be combined with other inspection activity.

4 A Port Area may be carried over to the next cycle if the inspection cannot be completed, due to the employers' refusal to allow it.

5 Approval for carrying over an establishment for reasons not listed above must be requested from the Regional Administrator and approved by the Director of Field Coordination.

(c) At the end of a Fiscal Year quarter the number of inspections yet to be completed in that quarterly cycle shall be taken into account in setting the new quarterly inspection cycle.

EXAMPLE:

At the end of the quarter an Area Office has one Port Area left to inspect with an estimated total of 3 longshoring employers (stevedore). If the projected number of longshoring inspections for the new quarter is 10, the new quarterly Port Area list will be used to select Port Areas yielding at least 7 (rather than 10) inspections (i.e., employers).

(d) If all Port Areas in the quarterly inspection cycle have been inspected but fewer employers are inspected than originally predicted, additional Port Areas from the Port Area list shall be selected, using the order prescribed by the random numbers, until the additional number of inspections (i.e., employers) at least equals the number of inspections still needed to meet the number of inspections projected for the quarter.

(e) Similarly, if the Area Office is able to do more programmed longshoring inspections that the number of inspections projected at the beginning of the quarter, additional Port Areas may be scheduled for inspection in the order prescribed by the random numbers.

(6) Deletions. A Port Area shall be deleted if a substantially complete inspection of the Port Area is conducted as a complaint inspection rather than a programmed inspection cycle.

NOTE: This paragraph does not preclude unprogrammed inspections conducted in response to specific evidence of conditions involving imminent danger or serious hazards at a worksite, such as those obtained through direct observations. These instances will be evaluated by the Area Director and, if appropriate, investigated as a referral inspection. These referrals will be logged on the OSHA-90 Form.

(7) Other Maritime Industry Inspections. Maritime industries not covered by one of the above scheduling programs, such as oil and gas extraction and diving operations, will be scheduled as a local emphasis program under the special emphasis program as outlined in I.5. of this instruction.

5. Special Emphasis Programs. Programs providing for programmed inspections which do not fall under those covered by the Planning Guides are "Special Emphasis Programs." They include Local Emphasis Programs, Special Programs and Migrant Housing Inspections. (See PAE 1.1A, Appendix A, paragraph D for definitions.)

a. Description. The description of, and reasons for, Special Emphasis Programs will be set forth in appropriate instructions. Local emphasis programs shall be submitted for approval to the Office of Field Coordination, through the Regional Office.

(1) The subject matter of the particular program will be identified by one or more of the following:

- Specific industry.
- Trade/craft.
- Substance.

* * * * * * *

Thorne G. Auchter
Assistant Secretary

DISTRIBUTION: National, Regional and Area Offices
Compliance Officers
State Designees
NIOSH Regional Program Directors

Appendix A

HEALTH INSPECTION PLAN

In scheduling General Industry (safety) inspections, industries (SIC's) are selected primarily on the basis of the frequency of injuries in those industries. In comparison with injury incidence rates, however, ILLNESS incidence rates often do not accurately reflect health hazards in the workplace. Targeting 1/ of General Industry (health) inspections, therefore, is based on the agency's Health Inspection Plan (HIP). The HIP selects industries with the greatest potential for health problems.

The HIP combines available data on selected substances previously reported as being found in each industry,(SIC) by NIOSH, the number of employees potentially exposed to those substances, and the severity of potential adverse health effects.

An important step in developing the HIP was to examine the health hazard(s) of the relevant substances. A panel of scientists with backgrounds in medicine, Industrial Hygiene and toxicology, OSHA, NIOSH, and the University of Cincinnati Department of Environmental Health, reviewed the toxicological information available for all OSHA-regulated substances (those listed in Tables Z-1, Z-2, and Z-3 of 29 CFR 1910.1000 and in the standards, 29 CFR 1910.1001 through 1910.1014) and for substances for which threshold limit values have been established by ACGIH. Based on an evaluation of the literature, each substance was assigned to a toxic effects category and given a numerical "hazard weight" depending on possible health effect(s) of the substance. Factors taken into consideration included whether the substance causes cancer, whether the substance effects of one or more organ systems of the body, and whether the adverse health effects of the substance are reversible or irreversible.

1/ The use of the term "target" with reference to health inspections does NOT imply that only health inspections in the identified industries are considered as the agency's high hazard health inspections. Rather, the list provided is an administrative tool for an establishment selection scheme. Many hazardous industry SIC's exist that do not appear on the list.

Those industries that had multisubstances determined to be most hazardous and had a relatively high number of employees potentially exposed, were given the most weight. A priority listing was then made of the type of industry by Standard Industrial Classification Codes (SIC's) considered most hazardous. Individual firm's name, address and number of employees are provided from State Unemployment Insurance (UI) employer files where available.

The HIP identifies industries with the highest priority for inspections by State and provides information of the location of establishments and on the toxic substances generally found within each of the high hazard industries.

Four reports will be provided as part of the HIP. REPORT 1 through REPORT 4 contain a sample of each report with a detailed explanation. Briefly, they are lists of the high priority SIC's by State, the establishment in each SIC by Area and by county, and the substances most frequently found in the high ranking industries. The ranking of industries for each State is based on the industry's average employment and potential exposure to the toxic substances found in the industry.

POTENTIAL EXPOSURE is derived from exposure data from NIOSH's National Occupational Hazard Survey (NOHS) which include the number of employees exposed to a substance full-time in a particular industry, the number exposed part-time, and the number employed in that industry.

As mentioned earlier, substances were assigned toxic effect categories by a panel of experts from OSHA and National Institute of Occupational Safety and Health (NIOSH). How strong the evidence of whether the substance causes cancer, whether the substances cause an irreversible effect or a reversible one, whether the evidence is human or animal and whether the substance effects of one or more organ systems were all taken into consideration in assigning the substance to a category.

The following section, "Industry Ranking", shows the calculations used to determine the final ranking of each industry. The terms used are further explained in the Description, REPORT 1 through REPORT 4.

INDUSTRY RANKING

1. The industry weighted index in the sum of the SUBSTANCE WEIGHTED INDEXES for all the substances observed in that industry.

2. The SUBSTANCE WEIGHTED INDEX is calculated by multiplying the SUBSTANCE EXPOSURE INDEX by the HAZARD WEIGHT OF SUBSTANCE.

$$(\text{Substance exposure index}) \times (\text{Hazard weight of substance}) = \text{Substance weighted index}$$

3. The SUBSTANCE EXPOSURE INDEX is calculated using the NOHS data:

$$\text{Substance Exposure index} = \frac{(\text{number of part-time exposures}) + 5 \times (\text{number of full-time exposures})}{\text{Total number of employees surveyed}}$$

4. The HAZARD WEIGHT OF SUBSTANCE depends on which of the following categories it fell into according to the panel of experts:

Hazard Weight	Health Effect	Kind of Evidence
10	Carcinogen	Strong[1] (Human or Animal)
10	Irreversible	Human (affecting more than one organ)
7	Carcinogen	Weak[2]

---

[1] Positive results obtained from repetitive test, single species in agreement with other scientific data or more than one species.

[2] Positive results obtained in single species but not in agreement with other scientific data.

Hazard Weight	Health Effect	Kind of Evidence
7	Irreversible	Human (affecting one organ)
3	Irreversible	Animal
1	Reversible	Human or Animal

5. The industries are ranked according to the INDUSTRY WEIGHTED INDEX.

6. They are also ranked according to the INDUSTRY AVERAGE EMPLOYMENT, calculated as follows:

$$\frac{\text{Total \# of employees}}{\text{\# of Firms in Industry}} = \text{Industry Average Employment} \quad \text{(Average number of employee per firm)}$$

7. To arrive at the final ranking, the ranks obtained from the INDUSTRY WEIGHTED INDEX and the INDUSTRY AVERAGE EMPLOYMENT are added together and the industries listed in order of the combined rank value (lowest first).

REPORT 1 - Description

Industry Ranking List for (State Name)

For each State this report contains the target health industries in rank order.

SIC and Industry Description. - These descriptions are based on 1972 Standard Industrial Classification (SIC) Manual, and presented at the 4-digit level for manufacturing and at the 3-digit level for nonmanufacturing industries.

Rank. - Rank of industry based on its Weighted Index in descending order and its average employment within the state

Exposure Factor. - Sum of exposure factors for all substances observed in the industry. (See Report 2 for definition of Exposure Factors for a substance.)

Weighted Index. - Sum of Weighted Indexes for all substances observed in the industry. (See Report 2 for definition of Weighted Index for a substance.)

Workers. - Industry Employment.

Firms. - Number of establishments in the industry.

Substance Count. - Number of OSHA regulated substances observed in the industry for NOHS.

Cumulative Totals. - Cumulative totals are provided for each industry for the employment and number of firms. The Cumulative totals are the sum of the value for that industry and all other industries with a lower rank.

FIGURE A-1

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HEALTH INSPECTION PLAN

INDUSTRY RANK LIST FOR RHODE ISLAND

SIC	INDUSTRY DESCRIPTION	RANK	WTD INDEX	WORKERS	FIRMS	EXP FACTOR	EXP INDEX	SUBSTANCE COUNT	****** CUMULATIVE TOTALS ****** WORKERS	FIRMS
3731	SHIP & BOAT BLDNG & R	1	190.5	4408	8	159667	30.2	238	4408	8
3751	MOTORCYCLES, BIKES &	2	88.2	197	1	16526	17.6	57	4605	9
3691	MISC ELEC MACHY, EQUI	3	118.1	1086	2	19620	15.4	151	5691	11
3674	ELECTRONIC COMPON & A	4	97.0	124	1	334098	13.8	47	5815	12
2833	DRUGS	5	86.7	871	5	18833	14.3	238	6686	17
3568	GEN INDUST MACHY & EQ	6	143.7	212	1	61560	30.4	102	6898	18
3511	ENGINES & TURBINES	7	75.0	761	8	71424	12.0	234	7659	26
3483	ORDNANCE & ACCESS EXC	8	69.7	288	2	9449	11.9	92	7947	28
2732	BOOKS	9	130.9	292	1	37884	16.4	139	8239	29
3221	GLASS, PRESSED OR BLO	10	75.6	1526	11	5778	15.7	111	9765	40
3291	ABRAS, ASBEST & MISC	11	74.9	218	2	91975	13.1	298	9983	42
2821	PLASTICS MATERIALS ET	12	102.7	96	2	105817	20.9	256	10079	44
2844	SOAP, DETERG & CLEAN	13	68.5	1045	2	8857	12.1	227	11124	46
3561	GEN INDUST MACHY & EQ	14	106.6	102	2	26372	18.2	296	11226	48
3724	AIRCRAFT & PARTS	15	63.0	70	1	115467	11.7	230	11296	49
3322	IRON & STEEL FOUNDRIE	16	108.6	1214	1	2657	16.4	142	12510	50
2521	OFFICE FURNITURE	17	91.4	220	2	2757	15.4	42	12730	52
3542	METALWORKING MACHY &	18	136.0	158	4	33286	21.6	141	12888	56
3555	SPECIAL INDUSTRY MACH	19	63.3	99	1	55044	11.0	115	12987	57
3612	ELEC TRANS & DISTR EQ	20	59.3	523	3	45052	10.3	165	13510	60
3462	METAL FORGINGS & STAM	21	98.8	2565	13	18564	14.0	181	16075	73
3269	POTTERY & RELATED PRO	22	209.7	346	3	5826	33.1	177	16421	76
3559	SPECIAL INDUSTRY MACH	23	70.0	155	2	65868	11.3	211	16576	78
3567	GEN INDUST MACHY & EQ	24	100.2	251	3	15893	16.8	163	16827	81
3011	TIRES & INNER TUBES	25	58.6	1193	15	17160	10.0	251	18020	96
3325	IRON & STEEL FOUNDRIE	26	198.3	239	4	7280	23.0	221	18259	100
3714	MOTOR VEHICLES & EQUI	27	61.3	306	6	21060	9.8	301	18565	106
2641	CONVERTED PAPER ETC E	28	87.7	462	1	47210	15.8	255	19027	107
3694	MISC ELEC MACHY, EQUI	29	59.2	663	4	20463	10.1	216	19690	111
2522	OFFICE FURNITURE	30	60.9	4886	15	6029	9.9	202	24576	126
3677	ELECTRONIC COMPON & A	31	97.7	154	4	14257	14.3	132	24730	130
3579	OFFICE, COMPUT & ACC	32	50.5	914	15	31763	12.5	147	25644	145
2865	INDUSTR ORGANIC CHEMI	33	114.8	944	2	4154	16.1	129	26588	147
3915	JEWELRY, SILVER & WAR	34	87.7	108	3	11592	12.6	157	26696	150
3547	METALWORKING MACHY &	35	51.1	500	2	6565	8.8	85	27196	152
3589	REFRIG & SERV INDUST	36	68.4	356	4	11077	11.2	205	27552	156
2647	CONVERTED PAPER ETC E	37	57.1	1629	2	4417	10.8	142	29181	158
2231	BROAD WOVEN FABRIC WO	38	65.6	1043	7	18042	9.3	41	30224	165
3229	GLASS, PRESSED OR BLO	39	83.8	365	2	11426	13.7	20	30589	167
2843	SOAP, DETERG & CLEAN	40	177.8	592	7	11571	31.7	290	31181	174

CONFIDENTIAL, THESE DATA ARE FOR OSHA ADMINISTRATIVE USE ONLY
DISCLOSURE OF THESE DATA MAY VIOLATE SECTION 17F OF THE OSH ACT

REPORT 2 - Description

Toxic Substance Report by Industry

Each industry in REPORT 1 contains data on the top 80 substances which contribute to the high rank of this industry. The following data are furnished:

SIC and Industry Description. - These descriptions are based on 1972 Standard Industrial Classification Manual, and presented at the 4-digit level for manufacturing and at the 3-digit level for nonmanufacturing industries.

NOHS Surveyed. - Employment and Firms -- Number of employees and firms which were surveyed as part of NOHS Survey.

IHFOM CODE. - Substance CODE is listed in Chapter II of OSHA's Industrial Hygiene Field Operations Manual.

NOHS CODE. - NOHS Substance Description.

Exposure Factor. - Sum of Part-time Exposures and five (5) times Full-time Exposures. Full-time Exposure (from NOHS) defined as working with the substance 4 hours or more a day. Part-time Exposure is defined as working with the substance 30 minutes or more per week, but not full-time.

Exposure Index. - Exposure Factor divided by Employment in NOHS.

Hazard Weight. - Weight associated with the classification of substance by known health effects. An expert panel classified the severity of the health effects of each substance in the IHFOM into multiple classes. (See page A-4.)

Weighted Index. - The product of the Exposure Index and the Hazard Weight.

Bottom Line of Report 2. - This is a summary line for the industry. It gives the total number of substances observed in the industry of which 80 are listed in REPORT 2. Other totals displayed are the sum of the Exposure Factor, Exposure Index and Weighted Index for all substances observed in the industry.

FIGURE A-2

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DATE: 09/11/81                 OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION                          PGM HLTHS.
TOTAL  RHODE ISLAND              OFFICE OF STATISTICAL STUDIES AND ANALYSIS                           PAGE:   44
                                          HEALTH INSPECTION PLAN

                          TOP RANKED SUBSTANCES IN NOHS INVENTORY BY WEIGHTED INDEX
                                                   WITH
                                     NOHS ESTABLISHMENT CHARACTERISTICS

                                                                 ---NOHS   SURVEYED---
SIC   INDUSTRY DESCRIPTION                                     EMPLOYMENT       FIRMS

3321  GRAY IRON FOUNDRIES                                         7,238           26

        INFOM   NOHS                                                              EXPOSURE    EXPOSURE  HAZARD    WEIGHTED
        CODE    CODE        DESCRIPTION                                            FACTOR      INDEX    WEIGHT     INDEX

        0374   80517    SODIUM BORATE                                                531       .073      07        .513
        2570   A1010    VANADIUM OXIDES                                              499       .068      07        .482
        9210   94220    WOODS                                                        330       .045      10        .455
        1060   31500    ETHYL ALCOHOL                                              1,076       .148      03        .445
        1720   46970    TRICHLOROETHANE, 1,1,1-                                      447       .061      07        .432
        2490   73790    ETHYLENE, TRICHLORO-                                         415       .057      07        .401
        1591   91160    INORGANIC LEAD COMPOUNDS                                     275       .037      10        .379
        0686   M0063    INORGANIC CHROMATES                                          271       .037      10        .374
        1018   M0347    ETHYLHEXYL) PHTHALATE, BIS(2-                                261       .036      10        .360
        2432   73253    TIN OXIDES                                                   366       .050      07        .353
       C0320   09070    BENZENE                                                      253       .034      10        .349
        2432   M0877    STANNIC OXIDE                                                351       .048      07        .339
        0577   17695    CEMENT-PORTLAND                                              351       .048      07        .339
        2432   82157    STANNOUS OXIDE                                               351       .048      07        .339
        1913   32385    ETHYLENE GLYCOL                                              230       .031      10        .317
        2020   54790    TETRACHLOROETHYLENE                                          319       .044      07        .308
        2532   82880    PHOSPHORIC ACID, TRITOLYL ESTER                              293       .040      07        .283
        0374   24130    DICHLOROETHANE, 1,2-                                         202       .027      10        .279
        0686   80064    POTASSIUM DICHROMATE(VI)                                     199       .027      10        .274
        1790   48628    MOLYBDENUM OXIDES                                            649       .089      03        .268
        0867   24003    DICHLOROBENZENE, ORTHO-                                      193       .026      10        .266
        1779   48535    MICA                                                         273       .037      07        .264
        0760   20380    CRESOL                                                       186       .025      10        .256
        0570   17490    CARBON TETRACHLORIDE                                         183       .025      10        .252
        2090   81650    PHOSPHORUS                                                   181       .025      10        .250
        1536   40430    ISOBUTYL ALCOHOL                                             174       .024      10        .240
        1660   45930    METHANOL                                                     249       .034      07        .240
        1340   90880    GASOLINE-LEADED                                              174       .024      10        .240
        1591   83453    LEAD NAPHTHENATE                                             167       .023      10        .230
        0686   19395    CHROMIUM                                                     165       .022      10        .227
        2000   M0600    PARAFFIN                                                     159       .021      10        .219
        2540   74990    TURPENTINE                                                   206       .028      07        .199
        0520   15755    CALCIUM OXIDE                                              1,436       .198      01        .198
        0686   81876    CHROMIC ACID, LEAD(2+) SALT (1:1)                            142       .019      10        .196
        9010   M1806    SILICA FLOUR                                                 196       .027      07        .189
        1060   M0238    ALCOHOL                                                      429       .059      03        .177
        2310   70870    SULFURIC ACID                                                182       .025      07        .176
        1030   04980    ETHANOLAMINE                                                 422       .058      03        .174
        2360   71640    TETRAETHYL LEAD                                              174       .024      07        .168

                              311 SUBSTANCES FOR SIC 3321           OTHER TOTALS:  132,776      18.196                121.570
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FIGURE A-2 (continued)

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DATE: 09/11/81                  OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION                       POM HLTH3.
TOTAL  RHODE ISLAND               OFFICE OF STATISTICAL STUDIES AND ANALYSIS                        PAGE:   43
                                           HEALTH INSPECTION PLAN

                             TOP RANKED SUBSTANCES IN NOHS INVENTORY BY WEIGHTED INDEX
                                                     WITH
                                       NOHS ESTABLISHMENT CHARACTERISTICS

                                                        ---NOHS   SURVEYED---
SIC   INDUSTRY DESCRIPTION                             EMPLOYMENT       FIRMS

3321  GRAY IRON FOUNDRIES                                 7.236          26
                                                                              EXPOSURE    EXPOSURE  HAZARD    WEIGHTED
       INFOM   NOHS                                                           FACTOR      INDEX     WEIGHT    INDEX
        CODE   CODE        DESCRIPTION

        9050  84055     SILICA, AMORPHOUS FUSED                                9,077      1.254      07      8.778
        2229  M1463     IRON OXIDE, RED                                        8,700      1.201      07      8.413
        1520  40297     IRON OXIDES                                            7,893      1.090      07      7.633
        9010  67915     SAND                                                   7,070       .976      07      6.837
        1520  80990     IRON OXIDE, YELLOW                                     6,234       .861      07      6.029
        1520  70131     IRON OXIDE (FE304)                                     6,224       .859      07      6.019
        1520  M0130     FERROUS OXIDE                                          6,217       .858      07      6.012
        1842  50495     NICKEL OXIDES                                          3,851       .532      10      5.320
        0490  15630     CADMIUM OXIDES                                         3,396       .469      10      4.691
        2537  A1003     TUNGSTEN OXIDES                                        3,369       .465      07      3.258
        1591  42490     LEAD                                                   2,228       .307      10      3.078
        0230  A1433     ANTIMONY SULFIDE                                       2,174       .300      10      3.003
        0230  07310     ANTIMONY                                               2,174       .300      10      3.003
        2620  M0626     ZIRCONIUM OXIDE                                        2,175       .300      07      2.103
        0686  19430     CHROMIUM TRIOXIDE                                      1,379       .190      10      1.905
        0695  19767     COAL                                                   1,901       .262      07      1.838
        1620  44035     MANGANESE OXIDES                                       1,893       .261      07      1.830
        2037  M2829     PETROLEUM SPIRITS                                      1,235       .170      10      1.706
        0290  90320     ASPHALT                                                1,026       .141      10      1.417
        0527  80243     CARBON                                                 1,016       .140      10      1.403
        1620  44030     MANGANESE DIOXIDE                                      1,445       .199      07      1.397
        1620  81664     MANGANESE OXIDE                                        1,443       .199      07      1.395
        1620  M1634     MANGANOUS OXIDE                                        1,426       .197      07      1.379
        0160  20265     ALUMINUM OXIDE                                         2,995       .413      03      1.241
        9090  17366     GRAPHITE                                               1,095       .151      07      1.058
        0700  90620     COAL TAR PITCH VOLATILES                                 743       .102      10      1.026
        2040  55460     PHENOL                                                   645       .089      10       .891
        2080  57740     PHOSPHINE                                                590       .081      10       .815
        1591  42685     LEAD OXIDES                                              569       .078      10       .786
        2590  76720     XYLENE                                                   813       .112      07       .786
        1631  45315     MERCURY OXIDES                                           501       .069      10       .692
        0360  11855     BERYLLIUM OXIDES                                         499       .068      10       .689
        2420  72085     THALLIUM OXIDES                                          485       .067      10       .670
       C9020  90310     ASBESTOS                                                 477       .065      10       .659
        2460  73300     TOLUENE                                                  673       .092      07       .650
        5010  52131     OIL, CUTTING                                             439       .060      10       .606
        1290  33640     FORMALDEHYDE                                             436       .060      10       .602
        9030  71055     TALC                                                     612       .084      07       .591
        2611  77150     ZINC CHLORIDE                                            428       .059      10       .591
        0560  17460     CARBON MONOXIDE                                          611       .084      07       .590
        5010  52138     OIL, LUBE                                                419       .057      10       .578
```

REPORT 3 - Description

County Location for Establishment in (State Name)

The name, address and county of the establishments for each Target Industry recorded in REPORT 1 are listed in this report by Area Office. Figure 4 is a sample page from the report for the State of Massachusetts. For each SIC the following information is given:

SIC and Rank Number. - The SIC and its rank is the rank of the industry based on its Weighted Index and average employment in descending order.

Establishment Name. - Name of each establishment.

Workers. - Number of employees in the establishment.

County Name. - Name of the county in which the establishment is located.

Plant Location. - Additional location, if given, for the location of the plant.

Alternative Establishment Name. - Alternative name, if any, of the establishment.

NOTE: For REPORT 3 and REPORT 4.
Within this establishment report, data exception can occur in the name and address as follows:

Up to four lines shown for each establishment name and address including ZIP CODE. Each establishment address field in the U.I. files provides for both primary and secondary establishment name, street address, city, State and ZIP CODE. Not all establishments have names and addresses; some have post office box numbers. Not all establishments listed for a given county have addresses within the county, and not all addresses are within the State.

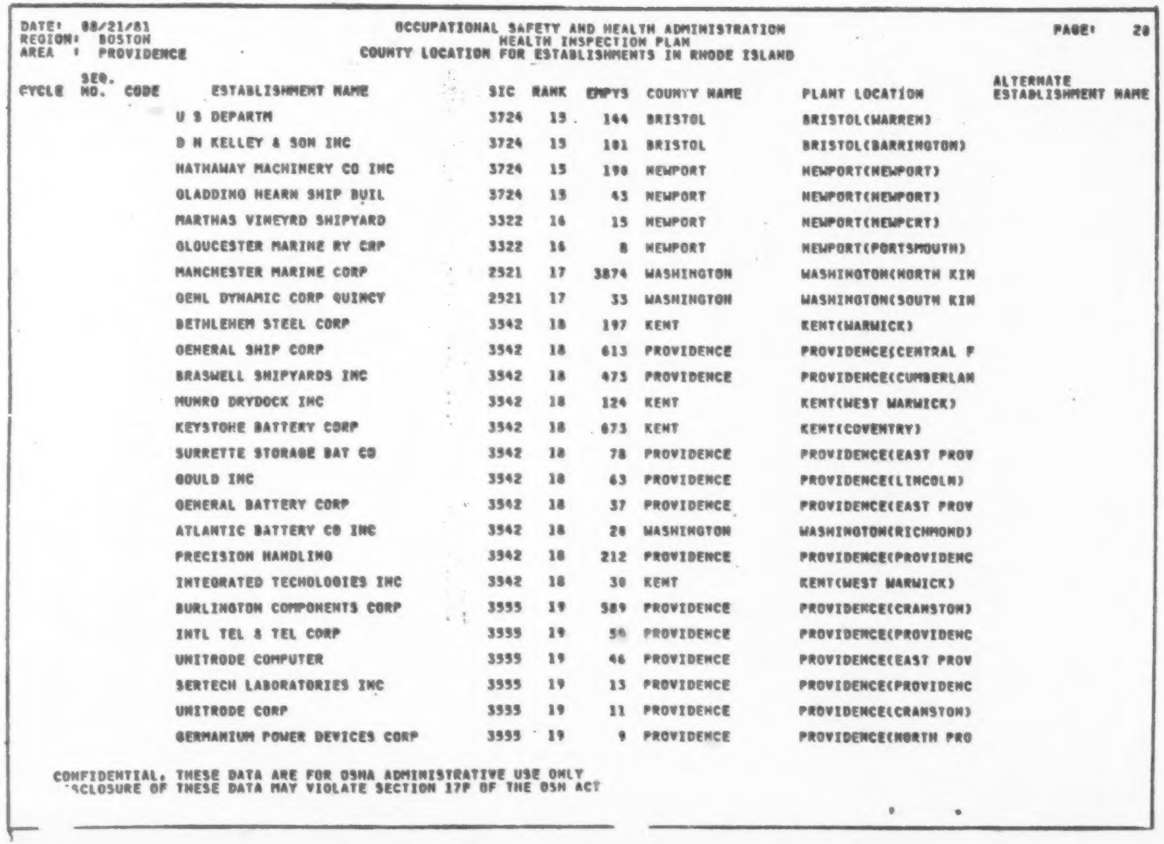
In many instances two lines are not present for an establishment name. If both name fields were not entered in the U.I. files by the State preparing the U.I. tape, only the one entered will be listed. In some instances the same name has been entered as both primary and secondary. Where this occurs, the primary name is duplicated under the Alternate Name Column. Where no establishment name is provided, the SIC code, address and number of employees can assist the OSHA Field Offices in determining if the establishment does exist.

Duplicate entries for an establishment may appear on the establishment list. This could indicate a second site for the establishment or it may be only a duplicate entry in the U.I. files.

A signficant number of establishment addresses provided in the establishment list are post office box numbers. Occasionally, the city and state associated with the Post Office box or street address is out-of-county, or out-of-state. This situation frequently indicates that the firm is doing business in the area, but the address shown is for the home office, or for the accountant who files on behalf of the firm. A metropolitan manufacturing index for a state or the telephone company yellow pages can usually be used to find the local address for such firms.

Frequently, a zero ZIP CODE appears in the address. This occurrence could indicate an out-of-county or out-of-state corporation operating in the area, or it could be simply a data omission in the U.I. files.

FIGURE A-3



DATE: 08/21/81
REGION: BOSTON
AREA : PROVIDENCE

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
HEALTH INSPECTION PLAN
COUNTY LOCATION FOR ESTABLISHMENTS IN RHODE ISLAND

PAGE: 20

CYCLE	SEQ. NO.	CODE	ESTABLISHMENT NAME	SIC	RANK	EMPYS	COUNTY NAME	PLANT LOCATION	ALTERNATE ESTABLISHMENT NAME
			U S DEPARTM	3724	15	144	BRISTOL	BRISTOL(WARREN)	
			D N KELLEY & SON INC	3724	15	101	BRISTOL	BRISTOL(BARRINGTON)	
			HATHAWAY MACHINERY CO INC	3724	15	190	NEWPORT	NEWPORT(NEWPORT)	
			GLADDING HEARN SHIP BUIL	3724	15	43	NEWPORT	NEWPORT(NEWPORT)	
			MARTHAS VINEYRD SHIPYARD	3322	16	15	NEWPORT	NEWPORT(NEWPCRT)	
			GLOUCESTER MARINE RY CRP	3322	16	8	NEWPORT	NEWPORT(PORTSMOUTH)	
			MANCHESTER MARINE CORP	2521	17	3874	WASHINGTON	WASHINGTON(NORTH KIN	
			GENL DYNAMIC CORP QUINCY	2521	17	33	WASHINGTON	WASHINGTON(SOUTH KIN	
			BETHLEHEM STEEL CORP	3542	18	197	KENT	KENT(WARWICK)	
			GENERAL SHIP CORP	3542	18	613	PROVIDENCE	PROVIDENCE(CENTRAL F	
			BRASWELL SHIPYARDS INC	3542	18	473	PROVIDENCE	PROVIDENCE(CUMBERLAN	
			MUNRO DRYDOCK INC	3542	18	124	KENT	KENT(WEST WARWICK)	
			KEYSTONE BATTERY CORP	3542	18	673	KENT	KENT(COVENTRY)	
			SURRETTE STORAGE BAT CO	3542	18	78	PROVIDENCE	PROVIDENCE(EAST PROV	
			GOULD INC	3542	18	63	PROVIDENCE	PROVIDENCE(LINCOLN)	
			GENERAL BATTERY CORP	3542	18	37	PROVIDENCE	PROVIDENCE(EAST PROV	
			ATLANTIC BATTERY CO INC	3542	18	28	WASHINGTON	WASHINGTON(RICHMOND)	
			PRECISION HANDLING	3542	18	212	PROVIDENCE	PROVIDENCE(PROVIDENC	
			INTEGRATED TECHOLOGIES INC	3542	18	30	KENT	KENT(WEST WARWICK)	
			BURLINGTON COMPONENTS CORP	3555	19	589	PROVIDENCE	PROVIDENCE(CRANSTON)	
			INTL TEL & TEL CORP	3555	19	59	PROVIDENCE	PROVIDENCE(PROVIDENC	
			UNITRODE COMPUTER	3555	19	46	PROVIDENCE	PROVIDENCE(EAST PROV	
			SERTECH LABORATORIES INC	3555	19	13	PROVIDENCE	PROVIDENCE(PROVIDENC	
			UNITRODE CORP	3555	19	11	PROVIDENCE	PROVIDENCE(CRANSTON)	
			GERMANIUM POWER DEVICES CORP	3555	19	9	PROVIDENCE	PROVIDENCE(NORTH PRO	

CONFIDENTIAL. THESE DATA ARE FOR OSHA ADMINISTRATIVE USE ONLY
DISCLOSURE OF THESE DATA MAY VIOLATE SECTION 17F OF THE OSH ACT

REPORT 4 - Description

Establishment Within the County of (County Name)

For each State the names and addresses of each establishment within the targeted industries are listed by county. This data is a rearrangement of the data in REPORT 3. Figure 5 is a page from the report for the State of Massachusetts. For each firm in a target industry the following data are listed:

Establishment Name and Address. - Up to five lines are shown for each name and address, including the ZIP CODE and plant location.

Firm I.D. - Indentification number associated with each plant location listed in the plan. This number must be entered on the OSHA-1 Form in the Field Offices.

Workers. - Total number of employees for the establishment.

SIC. - 1972 Industry Code for the establishment (4-digit SIC level for manufacturing and 3-digit SIC level for other industries).

Rank. - Assigned sequential number for the industry beginning with one (1) for the highest combined rank of Weighted Index and average employment. All establishments in a given SIC have the same ranking number as that of the industry listed in the reference between the Industry Ranking List Report and the establishment reports.

Weighted Index. - Industry Weighted Index. (See REPORTS 1 and 2 for definitions.)

NOTE: Within this establishment report, the same data exceptions can occur in the names and addresses as explained in REPORT 3.

FIGURE A-4

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DATE:  08/21/81                       OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION                        PAGE:    1
                                                  HEALTH INSPECTION PLAN
REGION : BOSTON
                        INDIVIDUAL ESTABLISHMENTS WITHIN HIGH RATE INDUSTRIES FOR RHODE ISLAND
AREA   : PROVIDENCE                        PAGE NO  1 FOR COUNTY OF BRISTOL

*************** ESTABLISHMENT DATA ***************    **** INDUSTRY DATA ****    ***************** COMMENTS *****************
                                    FIRM                                     WTD
  NAME AND ADDRESS                  ID        WORKERS    SIC       RANK      INDEX

MANSFIELD FORGE AND WELDING INC
360 OTIS ST
WARREN RI                  02885    440001865    134     3674        1       190.5
BRISTOL(WARREN)

AMER POWER DEVICES, INC
7 ANDOVER ST
BRISTOL RI                 02809    440001857    107     3674        1       190.5
BRISTOL(BARRINGTON)
***************************************************************************************************************************

PRECISION TECHNOLOGY INC
3 BUD WAY UNIT 22
EVERETT MA                 02149    440000669    117     2843       24        70.7
BRISTOL(WARREN)
***************************************************************************************************************************

WALBAR MACH PROD INC
INDUSTRIAL PK
WARREN RI                  02885    440001501     14     2833       26       100.2
BRISTOL(WARREN)
***************************************************************************************************************************

INTERNATIONAL LIGHT INC
DEXTER INDUSTRIAL DR
NEW YORK NY                10022    440000109    133     3462       30        47.7
BRISTOL(WARREN)
***************************************************************************************************************************

WOLVERINE CORP
30 OSGOOD ST
BRISTOL RI                 02809    440002012     81     3679       32        77.2
BRISTOL(BRISTOL)

COMINS PRODUCTS CO INC
3 SHEPARD ST
BRISTOL RI                 02809    440001998     75     3679       32        77.2
BRISTOL(BRISTOL)

ADVANCE REPRODUCTIONS
530 TURNPIKE ST
BRISTOL RI                 02809    440001980     46     3679       32        77.2
BRISTOL(BRISTOL)

    CONFIDENTIAL, THESE DATA ARE FOR OSHA ADMINISTRATIVE USE ONLY
    DISCLOSURE OF THESE DATA MAY VIOLATE SECTION 17F OF THE OSH ACT
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NOHS - Description

National Occupational Hazard Survey

The National Occupational Hazard Survey (NOHS) conducted by NIOSH was designed to obtain a profile of the chemicals used in the Nation's industries for use as a national health hazard information base. NOHS was expected to answer such questions as "What occupational groups are exposed to what types of potential health hazards in the United States?", "In what types of industries can these hazards be found?", "What types of controls are used to prevent harmful exposure?", and "To what hazards are the most people exposed?"

The National Occupational Hazard Survey was aimed at recording specific worker exposures to chemical hazards in the workplace and not at evaluating the severity of the hazard. NOHS addressed whether a substance was being used. Although its "objective" approach precluded determining relative risk to a given potential hazard, it assured consistence, improved validity of results, and circumvented prolonged data collection.

Over 5,200 establishments were sampled in different industries among 67 Standard Metropolitan Statistical Areas (SMSA's). In the sample, there were over 600 industries both large and small.

Complex, sprawling steel mills were included with simple family machine shops; hospitals and banks were chosen as well as rubber mills and chemical manufacturers.

The surveyors were engineers who were given a 9-week course in the fundamentals of industrial hygiene, and trained in gathering data in the field.

During a plant survey the surveyor observed every employee, recording exposure according to the guidelines set forth in the Field Surveyor's Manual. For example, after observing a furnace operation in a grey iron foundry, the surveyor would record the number of furnace operators, their exposures, such as: to iron oxide fumes, carbon monoxide, or noise; and intended controls for these exposures, such as ventilation.

The surveyor carried a noise level meter for determining recordable noise exposures but he did not take air samples to measure ambient concentrations. Nevertheless, exposures were reported as specifically as possible. If the surveyor observed exposure to trade name products, the name, manufacturer, and any ingredients listed would be recorded. The name of the manufacturer would be recorded so that the ingredients could be obtained from the manufacturer.

Definitions

__Exposure__: A general term indicating an employee's actual or potential, direct or indirect, contact with any chemical or biological agent or any physical condition.

A __Types__: All three types were recorded as exposure, but were not necessarily distinguished by type.

1. __Potential Exposure__. Any substance for which there is an intended control other than natural or dilution ventilation was recorded as the associated processes or conditions meet general duration guidelines.

2. __Actual Exposure__. Any actual exposure to mist, dusts, vapors, gases, or liquids which was observed to exist (i.e., seen, felt, or smelled) was recorded if it met the duration guidelines.

3. __Inferred Exposure__. If there was an observable accumulation (of dust or mist) which indirectly indicated that the substance was present in the air, an exposure to this substance was recorded.

B. __Duration__: Approximate length of time of exposure to a potential hazard.

1. __Full-time__. Exposure time (usage time) was greater than 4 hours per day and on a daily basis of at least 90 percent of the company's work year (or a standard work year).

2. __Part-time__. Exposure time was greater than 30 minutes per week (on an annual average and not full-time) or used as least once per week 90 percent of the weeks of the work year.

Appendix B

Summary Description of the Statewide Industry Ranking Reports and Establishment Lists

Each Area Office is furnished with a current industry ranking list as part of each year's Inspection Planning Guide (safety). The guide also includes establishment lists for most States. (See OSHA Instruction PAE 1.1, Appendix E, for further details.)

The Statewide Industry Ranking Report for each State includes all industries in the State which have a lost workday injury rate which equals of exceeds the most recently published national lost workday injury rate for the private sector, viz., 4.2. Industries are ranked according to their lost workday injury rate with the industry having the highest rate ranked first, the industry with the next highest ranked second, and so on. The lost workday injury rate is derived from the annual survey conducted by the Bureau of Labor Statistics pursuant to Section 24 of the Act. The lost workday injury rate is the number of lost workday injuries per 100 fulltime employees.

Establishment lists are generated by extracting from State Unemployment Insurance employer files the names and addresses of establishments within the industries identified on the State ranking list. Such establishments are then listed by county. Within each SIC on the list, firms are ranked according to size with those establishments having the greatest number of employees listed first.

Construction industries (SIC's 1500-1799) are designated high rate industries due to their high injury and fatality rates. At the national level, construction industries employ 5 percent of the workers but account for 19 percent of the fatalities. The injury rates for the construction industries are contained in Figure B-1.

The maritime industry is also designated a high rate industry due to its high injury and fatality rates. The maritime industry is not contained within any specific SIC code(s) but rather includes water-related activities within several industries, such as SIC 5541, marine service stations, and SIC 7399, commercial divers. The national incidence rate data in Figure B-2 includes both land- and water-related activities for the listed industries.

FIGURE B-1

CONSTRUCTION INJURY INCIDENCE RATES FOR 1979
FOR TOTAL UNITED STATES

		***INCIDENCE		RATES***	
CONSTRUCTION INDUSTRY	SIC CODE	* TOTAL CASE	LOST WORKDAY CASE	* LOST WORKDAY	LWD PER CASE
RESIDENTIAL BUILDING CONSTRUCTION	1520	12.9	6.0	107.3	18
OPERATIVE BUILDERS	1530	15.5	6.8	84.1	12
NONRESIDENTIAL BUILDING CONSTRUCTION	1540	19.5	7.4	117.1	16
HIGHWAY AND STREET CONSTRUCTION	1610	15.2	6.2	121.7	20
HEAVY CONSTRUCTION,EXCEPT HIGHWAY	1620	16.7	6.8	80.4	12
PLUMBING, HEATING, AND AIR CONDITIONING	1710	16.8	6.1	96.7	16
PAINTING, PAPERHANGING, AND DECORATING	1720	9.3	5.1	102.6	20
ELECTRICAL WORK	1730	13.9	5.3	91.4	17
MASONRY, STONEWORK, AND PLASTERING	1740	16.2	7.6	131.2	17
CARPENTERING AND FLOORING	1750	13.9	7.4	143.5	19
ROOFING AND SHEET-METAL WORK	1760	22.1	12.0	217.4	18
CONCRETE WORK	1770	13.5	6.8	121.9	18
WATER WELL DRILLING	1780	15.0	8.5	165.0	19
MISCELLANEOUS SPECIAL TRADE CONTRACTORS	1790	17.2	7.5	151.7	20

STANDARD INDUSTRIAL CLASSIFICATION MANUAL, 1972 EDITION
INCIDENCE RATES;
TOTAL CASE; RECORDABLE INJURIES PER 100 FULL TIME WORKERS.
LOST WORKDAY CASE; LOST WORKDAY INJURIES PER 100 FULL TIME WORKERS.
LOST WORKDAY; LOST WORKDAYS DUE TO INJURIES PER 100 FULL TIME WORKERS.
LWD PER CASE; LOST WORKDAYS PER LOST WORKDAY INJURY.

FIGURE B-2

MARITIME INJURY INCIDENCE RATES FOR 1979
FOR TOTAL UNITED STATES

		***INCIDENCE		RATES***	
MARITIME INDUSTRY	SIC CODE	* TOTAL CASE	LOST WORKDAY CASE	* LOST WORKDAY	LWD PER CASE
OIL AND GAS EXTRACTION	1300	13.4	6.9	150.6	2
HEAVY CONSTRUCTION, EXCEPT HIGHWAY	1620	16.7	6.8	80.4	1
CANNED AND CURED FISH AND SEAFOODS	2091	22.6	9.8	152.8	1
FRESH/FROZEN PACKAGED FISH AND SEAFOODS	2092	20.3	10.0	136.8	14
SHIP BUILDING AND REPAIRING	3731	22.7	12.4	229.2	1
BOAT BUILDING AND REPAIRING	3732	22.9	10.5	153.8	1
WATER TRANSPORTATION SERVICES	4460	20.8	11.7	465.2	4

STANDARD INDUSTRIAL CLASSIFICATION MANUAL, 1972 EDITION
INCIDENCE RATES;
TOTAL CASE; RECORDABLE INJURIES PER 100 FULL TIME WORKERS.
LOST WORKDAY CASE; LOST WORKDAY INJURIES PER 100 FULL TIME WORKERS.
LOST WORKDAY; LOST WORKDAYS DUE TO INJURIES PER 100 FULL TIME WORKERS.
LWD PER CASE; LOST WORKDAYS PER LOST WORKDAY INJURY.

THE MARITIME INDUSTRY IS NOT CLEARLY DEFINED BY SIC CODES. IT INCLUDES THE WATER RELATED ACTIVITIES IN THE ABOVE INDUSTRIES AS WELL AS THESE ACTIVITIES IN OTHER INDUSTRIES SUCH AS SIC 5541, MARINE SERVICE STATIONS, AND SIC 7399, COMMERCIAL DIVERS. THE WORD--MARITIME--SHOULD BE CODED ON THE OSHA-1 IN CROSS REFERENCE BOX 2 WHEN MARINE ACTIVITIES ARE INSPECTED.

Appendix C

Random Number Tables

The three lists of random numbers provided are designed to randomly order a list of firms which contains 1,000 or fewer firms. A larger list of random numbers will be supplied upon request.

The following tables have been produced by randomly ordering the integers from 1 to 1,000 and displaying the results in three lists corresponding to establishment list size.

LIST ONE - 100 numbers: the integers from 1 to 100 listed in five columns.

LIST TWO - 500 numbers: the integers from 1 to 500 listed in nine columns.

LIST THREE - 1,000 numbers: the integers from 1 to 1,000 listed in 18 columns.

The procedure to be used is as follows:

1. Make all deletions and additions to the establishment list. Deletions may be made at the same time as additions since all selections are made randomly.
2. Number the establishment list sequentially, i.e., assign "1" to the first firm on the list, "2" to the second, etc.
3. Select the smallest random number table with more numbers than firms on the establishment list; e.g., if the establishment list has from 101 to 500 firms, select list two.
4. Cross out all numbers on the random number table selected which are greater than the number of firms on the establishment list.

5. Include all firms in the first inspection cycle whose sequence number is listed in column I. If the size is larger than the size of column I, start at the top of column II and select enough numbers to fill out the inspection cycle.

6. Draw a line after the last random number used; this will be the starting point for the next inspection cycle.

Example: Suppose there are 70 firms on the establishment list and each inspection cycle contains 12 firms. Using the following examples of random number tables (not the ones to be used in actually making the selections), the Area Office would first select random number list one and cross out all numbers greater than 70. The first inspection cycle would then contain firms with the following sequence numbers: 30, 45, 25, 56, 6, 17, 32, 36, 2, 27, 19, and 13. A line would then be drawn under 13. The second inspection cycle would contain firms with the following sequence numbers: 12, 39 (that finishes column I; now start at the top of column II), 15, 59, 61, 33, 21, 64, 7, 42, 41, and 34. A line is then drawn under 34.

EXAMPLE: RANDOM NUMBER TABLE

LIST ONE - 100 NUMBERS

COLUMN I	COLUMN II	COLUMN III	COLUMN IV	COLUMN V
90	83	18	52	47
98	15	14	50	40
30	59	76	93	4
45	72	58	24	26
94	61	35	69	54
25	86	20	43	10
75	80	51	81	71
56	33	28	66	62
6	21	77	44	8
99	64	88	63	65
17	7	37	78	68
96	42	70	11	23
32	41	87	5	92
36	34	82	31	1
2	97	53	38	3
27	74	55	79	22
19	9	60	49	48
13	84	91	16	100
12	29	89	73	85
39	67	46	95	57

PREPARED BY THE OFFICE OF STATISTICAL STUDIES
AND ANALYSES, 9/18/81.

RANDOM NUMBER TABLE

EXAMPLE:

LIST TWO - 500 NUMBERS

COLUMN I	COLUMN II	COLUMN III	COLUMN IV	COLUMN V	COLUMN VI	COLUMN VII	COLUMN VIII	COLUMN IX
90	36	386	367	369	415	220	73	227
297	379	80	395	232	60	63	95	405
98	2	33	310	51	327	408	282	434
449	361	21	241	136	230	337	47	339
192	170	64	377	275	366	216	342	216
338	396	466	414	298	124	158	345	1
472	370	177	302	464	91	172	40	190
388	27	173	157	456	349	371	479	3
328	277	419	348	141	325	350	399	231
178	378	446	106	364	135	480	373	452
450	147	279	413	188	451	474	223	372
30	19	270	139	312	306	462	4	496
249	13	198	469	307	427	78	315	458
202	358	131	193	332	468	347	439	330
236	411	168	67	191	89	185	351	300
290	165	161	287	423	438	11	146	228
329	272	7	18	140	143	323	445	22
301	346	435	488	166	335	497	209	48
45	176	120	485	259	481	473	444	376
214	109	276	127	336	46	394	341	207
94	201	42	113	264	52	331	26	494
25	406	428	251	463	393	117	273	100
195	111	41	155	308	319	114	54	403
380	184	151	322	152	271	459	357	234
75	12	128	14	253	304	200	278	355
433	39	103	404	144	392	205	269	85
421	148	34	169	28	313	295	356	203
492	166	130	76	189	491	5	291	432
417	261	97	441	159	137	457	10	398
56	132	360	58	77	194	353	375	292
284	309	437	252	257	247	443	289	426
387	499	74	35	101	116	121	266	233
239	343	133	105	383	240	31	213	440
407	478	422	265	401	489	211	274	134
179	164	199	483	316	263	38	418	500
326	254	390	255	88	160	296	303	171
436	153	420	219	283	50	226	71	142
490	368	293	258	37	262	218	461	57
467	429	238	382	70	93	389	108	102
6	83	9	477	87	24	212	62	294
99	465	267	138	431	69	79	363	318
181	354	229	374	82	242	288	8	215
17	260	475	416	104	320	126	460	352
385	268	225	20	470	334	454	115	167
447	206	281	224	162	110	365	65	305
453	280	217	286	123	237	119	68	204
245	15	84	183	122	425	402	285	442
129	175	149	317	145	424	222	340	495
96	59	29	154	493	163	150	344	484
187	174	197	391	314	243	49	311	471
32	208	180	324	409	448	16	487	486
400	72	397	244	196	362	381	23	118
250	61	498	156	53	45	321	92	
430	86	221	299	55	81	384	333	
455	248	112	235	410	66	359	210	
125	412	256	482	182	44	476	107	

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EXAMPLE:

RANDOM NUMBER TABLE

LIST THREE - 1000 NUMBERS

COLUMN I	COLUMN II	COLUMN III	COLUMN IV	COLUMN V	COLUMN VI	COLUMN VII	COLUMN VIII	COLUMN IX
90	417	400	148	21	199	903	514	533
297	56	250	186	64	390	414	793	899
600	284	430	261	659	420	302	718	456
830	387	455	132	570	293	820	258	932
98	930	922	309	466	942	608	382	979
786	674	125	991	177	238	157	477	141
449	969	519	499	771	9	627	581	914
623	239	864	343	173	892	536	950	985
731	407	953	478	419	710	348	561	364
192	955	36	164	446	267	106	755	188
757	684	379	886	279	781	951	138	1000
338	824	2	254	270	725	413	374	312
657	782	526	153	198	229	893	416	642
472	602	361	368	131	475	139	959	307
540	179	170	946	555	539	469	20	507
388	683	517	836	168	961	754	224	332
328	751	835	429	993	225	193	845	191
962	543	396	83	668	522	67	705	567
178	326	990	465	161	998	697	826	423
611	436	370	931	7	792	878	286	140
450	857	27	925	698	281	527	678	166
30	490	277	811	435	217	287	592	259
249	573	687	867	120	647	866	183	336
202	997	378	735	276	84	783	634	264
236	467	147	354	42	762	847	317	463
534	797	981	260	428	545	18	154	308
578	720	599	268	41	831	488	638	546
736	516	19	206	151	149	548	391	510
290	593	13	280	772	29	485	858	669
764	6	358	15	563	197	127	324	528
329	99	884	974	128	180	113	948	552
575	594	411	175	715	696	954	833	827
701	512	995	796	574	986	646	616	607
636	181	165	730	939	673	251	978	821
675	17	272	928	103	838	606	244	152
301	967	346	59	843	823	155	870	253
45	385	679	626	34	535	322	156	144
214	936	681	174	130	397	14	508	860
94	777	711	916	97	498	404	766	518
941	447	863	958	360	221	169	584	28
25	453	851	208	872	112	703	299	569
908	245	176	557	877	645	76	605	189
566	828	109	935	798	256	816	235	596
801	706	940	72	802	784	841	482	921
195	745	768	61	437	367	644	629	808
944	553	709	86	652	813	441	806	159
380	562	635	589	748	694	58	369	897
75	660	201	956	774	662	604	232	77
848	749	406	248	580	395	252	542	257
433	129	511	790	767	310	35	51	101
881	966	111	412	778	894	105	136	653
421	96	945	618	74	241	265	275	753
585	187	989	386	960	377	483	970	
492	32	184	80	133	649	794	298	
577	667	12	895	422	505	255	464	
559	637	39	33	829	727	219	874	

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EXAMPLE:

RANDOM NUMBER TABLE

LIST THREE - 1000 NUMBERS - CONTINUED

COLUMN X	COLUMN XI	COLUMN XII	COLUMN XIII	COLUMN XIV	COLUMN XV	COLUMN XVI	COLUMN XVII	COLUMN XVIII
383	729	982	850	114	381	530	285	100
582	560	313	81	459	321	273	756	403
976	415	491	66	809	622	900	340	591
775	714	137	44	865	549	700	344	234
984	690	750	712	773	384	532	311	355
747	910	194	220	920	359	54	724	862
758	717	501	624	625	476	898	487	707
401	60	556	726	200	949	357	23	85
918	327	247	999	205	73	909	92	203
316	230	671	63	295	95	890	740	432
88	366	116	408	5	739	506	333	398
283	943	853	337	648	871	639	210	907
523	124	737	603	541	529	278	107	292
760	663	240	216	457	520	812	586	426
844	888	489	846	983	282	269	840	233
37	91	263	158	353	665	356	227	509
70	349	160	572	443	788	887	405	571
87	994	708	891	121	779	734	525	440
987	325	524	531	761	693	691	434	134
515	135	50	172	776	47	291	876	500
656	451	262	371	31	770	10	339	631
842	832	933	973	682	342	917	246	171
431	810	938	350	211	609	375	765	686
82	306	93	803	38	769	805	852	565
104	643	590	622	763	641	882	1	658
470	427	880	480	296	345	289	597	513
738	619	24	873	226	40	617	615	142
713	468	957	474	503	479	266	190	583
554	547	741	975	218	651	885	869	719
963	579	69	692	926	588	213	980	905
640	889	677	462	699	664	274	752	57
550	695	896	911	389	399	680	3	102
628	89	242	78	212	702	621	231	988
971	438	320	347	815	598	964	452	744
912	143	334	785	856	373	418	875	294
162	576	110	185	79	704	564	952	318
612	335	716	11	288	223	303	834	799
123	655	947	837	126	929	814	372	883
122	688	551	613	742	780	71	496	992
145	839	237	610	454	4	461	676	215
493	672	538	819	670	315	108	620	352
733	972	915	323	965	439	62	458	167
314	968	425	732	800	654	817	879	305
650	868	424	497	787	351	363	902	204
409	481	728	587	365	595	666	818	442
196	855	163	473	119	919	743	330	495
53	46	544	633	402	146	906	300	484
859	807	746	394	222	445	8	996	471
795	52	791	504	150	209	460	568	486
825	393	243	722	49	661	115	228	901
55	319	448	904	861	444	849	937	118
410	271	927	632	723	689	502	22	614
804	304	362	331	16	601	65	48	
182	521	630	924	685	558	68	376	
923	789	977	117	934	341	759	207	
854	392	43	913	721	26	537	494	

PREPARED BY THE OFFICE OF STATISTICAL STUDIES AND ANALYSES, 9/18/81.

Appendix D

Procedures for Determining Establishment Lost Workday Injury Rate

A. Opening Conference Guidelines. An opening conference shall be conducted with the employer and the employee representative as outlined in Chapter V of the Field Operations Manual (FOM). In addition, the CSHO shall explain the procedures for establishment selection and for determining whether the establishment will be exempted from a comprehensive safety inspection based on its lost workday injury rate. (This rate is the number of lost workday injuries per 100 full-time employees.) At the conclusion of this discussion, the CSHO shall provide the employer and the employee representative with:

1. A letter confirming these procedures (See Attachment 1);
2. The BLS publication, "Evaluating Your Firm's Injury-Illness Experience"; and
3. The "Recordkeeping Requirements" booklet.

B. Procedures for Determining Lost Workday Injury (LWDI) Rate. During or following the opening conference, the CSHO shall request the injury and employment data described in B.1, B.2, and B.3 for use in calculating the establishment's LWDI rate. The CSHO shall advise the employer of the provisions of Section 17(g) of the Act; i.e., whoever knowingly makes any false statement, representation, or certification in any record required by the Act is subject to a fine of not more than $10,000, or by imprisonment for not more than six months, or both. The employer shall be given a reasonable amount of time to gather the information requested.

1. Reference Years. The number of years from which injury and employment data will be used in the calculation of the LWDI rate is dependent upon the average number of workers employed in the

establishment during the previous three years. Average annual employment is determined by adding the number of workers employed in the establishment in each month included in the reference years, totalling the sum of the monthly employment figures, and dividing the total by the number of months involved. Count all full- and part-time workers, including seasonal, temporary, administrative, supervisory, and clerical.

EXAMPLE:

Monthly employment for 1980:

Jan.	0	April	30	July	0	Oct.	20
Feb.	0	May	30	Aug.	0	Nov.	20
March	20	June	0	Sept.	20	Dec.	20
						Total	160

$\frac{160 \text{ employees}}{12 \text{ months.}} = 13$ (average annual employment)

a. For establishments with an average annual employment of 20 or fewer employees in any of the 3 preceding calendar years, use data from all 3 years.

b. For establishments with an average annual employment of more than 20 employees in each of the 3 preceding calendar years, use data from the past 2 years.

SPECIAL INSTRUCTIONS:

a. If injury data from any of the reference years are not available because the employer was not in business or was not required to keep records, the rate shall be calculated on the basis of the reference years for which data are available.

b. If the employer was required to maintain records in all of the reference years, but has no records or partial records, the LWDI rate shall not be calculated for any of the reference years available. Records from years outside of the reference years shall not be used in the calculation. The CSHO shall advise the employer of apparent violations of recordkeeping violations and proceed with the inspection.

2. Employment Data. Request the number of hours worked by employees in each of the reference years. If this information is not available, request the average annual employment.

   a. Employee Hours. Obtain the number of hours worked by employees in each of the reference years. Do not include any nonworking time, even though paid, such as vacations, sick leave, etc. The employer might locate such information in payroll or time records, or on the OSHA 100-S (BLS Annual Survey). Record the data in the narrative section of the OSHA-1A.

   b. Average Annual Employment. Compute the average annual employment as explained in B.1.

3. Injury and Illness Records Review.

   a. Review the OSHA 200 logs and record in the narrative section of the OSHA-1A the number of LWDI's that occurred in the reference years. (LWDI's are defined as injuries involving days away from work and/or days of restricted work activity - Column 2 of the OSHA 200.) As usual, record OSHA 200 data on the OSHA-1S for the most recent full calendar year. Although cases of illness will not be used in calculating the LWDI rate, the CSHO conducting a safety inspection shall make note of any significant recorded illnesses and submit a health referral (OSHA-90 Form). The employer and employee representative shall be advised, according to the guidelines in Chapter V of the FOM, of the possibility of a referral health inspection.

b. Verification of records. While reviewing the OSHA logs, verify them by such methods as cross-checking a random sample of workers' compensation first reports of injury or OSHA 101's with OSHA 200 log entries or by interviewing the company representative responsible for maintaining injury records. If the verification process indicates that the OSHA 200 does not accurately reflect the lost workday injury experience at the establishment, data from the log cannot be used for calculation of the establishment's LWDI rate. In such a case, the CSHO shall advise the employer of the problem and proceed with the inspection. If the credibility of the records has been verified, the CSHO shall proceed with the calculation of the LWDI rate.

4. Calculation of the LWDI Rate. Calculate the LWDI rate according to one of the following formulas:

a. If the number of employee hours worked is available, use:

$$\text{LWDI Rate} = \frac{\text{\# LWDI's X } 200{,}000}{\text{\# employee hours worked}}$$

Where:

#LWDI's = sum of LWDI'S in the reference years

"employee hours worked" = sum of employee hours in the reference years

200,000 = base for 100 full-time workers, working 40 hours per week, 50 weeks per year

EXAMPLE:

An establishment scheduled for inspection in October 1981 employed an average of 54 workers in 1980, 50 workers in 1979, and 50 workers in 1978. Therefore, injury and employment data for the 2 preceding calendar years will be used.

LWDI's in 1979 = 5

LWDI's in 1980 = 3

# Employee hours worked in 1979 = 100,000

# Employee hours worked in 1980 = 108,000

$$\text{LWDI Rate} = \frac{(5 + 3) \times 200{,}000}{100{,}000 + 108{,}000}$$

$$= \frac{1{,}600{,}000}{208{,}000}$$

$$= 7.69 \text{ (rounded to 7.7)}$$

NOTE: Carry out calculations to the hundredths place and round to the tenths place. Round up for "5."
Examples: Round 6.55 to 6.6.
Round 4.12 to 4.1.

b. If data on employment hours worked are not available, use:

$$\text{LWDI Rate} = \frac{\text{\# LWDI's} \times 100}{\text{\# employees}}$$

Where:

LWDI's = sum of LWDI's in the reference years

# employees = sum of the average annual number of employees in the reference years

100 = base for 100 full-time workers

EXAMPLE:

An establishment scheduled for inspection in October 1981 employed an average of 19 employees in 1980, 20 employees in 1979, and 21 employees in 1978. Therefore, injury and employment data for all 3 years will be used.

LWDI's in 1978 = 0

LWDI's in 1979 = 1

# LWDI's in 1980 = 0

$$\text{LWDI Rate} = \frac{(0 + 1 + 0) \times 100}{21 + 20 + 19}$$

$$= \frac{100}{60}$$

$$= 1.67 \text{ (rounded to 1.7)}$$

C. Interpretation of Establishment LWDI Rate. Compare the LWDI rate calculated for the establishments to the most recently published (1979) BLS national rate for manufacturing (5.7). Determine whether an inspection will be conducted according to the following criteria:

1. LWDI Rate Below The National Rate For Manufacturing. A comprehensive safety inspection will not be conducted. If there is no employee representative at a worksite where a comprehensive safety inspection will not be conducted due to a low LWDI rate, the employer shall be asked to post the letter in Attachment 2 for his employees' information for at least 3 working days.

EXCEPTION:

A partial inspection may be conducted in special circumstances. If circumstances such as, but not limited to those listed in C.1.(a), (b) and (c.) arise at the establishment, the CSHO shall call the Area Director for a decision on whether to conduct an inspection and to what extent. In general, an inspection made under special circumstances should be limited to the specific areas or conditions of concern.

(a) CSHO observes a serious hazard or an imminent danger prior to or during the opening conference.

(b) CSHO notes during the records review that an unusual number or type of injuries have occurred in one time period, area, or operation.

(c) A safety complaint is filed during the opening conference by the employee representative.

NOTE: Only formal complaints alleging an imminent danger or serious hazard(s) should be immediately investigated. Other types of complaints should be taken by the CSHO to the Area Office for action at a later date.

2. LWDI rate at or above the national rate for manufacturing. A comprehensive safety inspection will be conducted.

3. Non-verifiable records. A comprehensive safety inspection will be conducted.

4. Partial injury data. If no injury data are available for the reference years, or only partial data are available from an employer who was required to maintain records in all of the reference years, a comprehensive inspection will be conducted.

NOTE: Where both safety and health programmed inspections are scheduled at the establishment, the review of injury records shall not affect the health inspection i.e., the health inspection shall proceed even if no comprehensive safety inspection is to be conducted.

ATTACHMENT 1

Dear Employer:

Your workplace has been scheduled for an inspection in accordance with OSHA's safety inspection targeting program. The information in this letter should help you understand how and why your establishment was selected for an inspection under this program.

It is OSHA's policy to concentrate its resources in those establishments within a high rate industry having the highest incidence of lost workday injuries. Your company is part of an industry whose lost workday injury rate is equal to or higher than the injury rate for private industry as a whole.

The OSHA office having jurisdiction in your area has compiled a register of establishments to be inspected from a report prepared by OSHA's National Office that ranks manufacturing industries by their Standard Industrial classification (SIC) code statewide, according to their lost workday injury (LWDI) rate. The National Office also provides the Area Office with a list of establishments for each SIC on the Statewide Industry Ranking Report. It is from this list that your establishment was selected for inspection.

OSHA recognizes that many establishments have a lost workday injury rate below that published for their industry. In such cases those establishments may qualify for exemption from a comprehensive OSHA safety inspection.

During the review of your injury records by the compliance officer, you will be given the opportunity to furnish information to be used in compiling your company's lost workday injury rate, which will determine whether a comprehensive safety inspection will be conducted at this time. The compliance officer will request the following information which is essential to the calculation of your rate:

(1) Your OSHA 200 logs and a sample of Worker's Compensation First Reports of Injury or OSHA 101's for the last 2 calendar years (or 3 years if you had an average of 20 or fewer employees in any one of the last 3 calendar years); and

(2) The number of hours worked by your employees in each of these years; or, if this information is not available, the average number of persons employed for each of these years.

If the compliance officer verifies through your records that your establishment's lost workday injury rate is below the most recently published BLS rate for the manufacturing industry, you will not receive a comprehensive safety inspection for this fiscal year. In special circumstances a partial inspection may be conducted. For example, if a complaint is received during the opening conference alleging an imminent danger or serious safety hazard or if the injury log reflects an unusual number or type of injuries occurring in one time period, operation, or area, an investigation of the specific condition may be pursued by the compliance officer.

Thank you for your cooperation in this program. If you have any questions, your compliance officer is available to discuss them with you.

Sincerely,

Area Director

ATTACHMENT 2

To: Employees of (name of establishment)

Your employer was selected for an OSHA safety inspection under the Agency's policy of concentrating its resources in those establishments within a high rate industry having the highest incidence of lost workday injuries. Any company, however, which has a lost workday injury rate that is below the overall manufacturing industry rate published by the Bureau of Labor Statistics (BLS) in its most recent report will not receive a comprehensive safety inspection for this fiscal year.

I have reviewed your employer's logs (OSHA 200's) and other supporting documents listing lost workday injuries suffered during the last 2 complete calendar years (3 years for companies employing an average of 20 or fewer workers in any of the last 3 years), and have calculated the lost workday injury rate to be__________. Since this is below the most recently published BLS rate for the manufacturing industry, which is __________, no comprehensive safety inspection is planned for this establishment (for this fiscal year). This exemption in no way affects the scheduling of other OSHA inspection activity, such as programmed health inspections, complaint inspections, and investigations of major accidents.

If you have any questions you may contact the Area Office at

(address and phone number)

Sincerely,

Compliance Office
Occupational Safety and Health Administration

Date ____________

U.S. Department of Labor

Assistant Secretary for
Occupational Safety and Health
Washington, D.C. 20210

OSHA Instruction CPL 2.47
August 17, 1981
Office of the Assistant Secretary

Subject: Compliance Officer Professionalism

A. Purpose. This directive transmits my instructions for the professional conduct of OSHA Compliance Officers.

B. Scope. This directive applies OSHA-wide.

C. Action. All OSHA Compliance Officers will follow the instructions contained in the Appendix.

Thorne G. Auchter
Assistant Secretary

Distribution: National, Regional, and Area Offices
All Compliance Officers
State Designees
All Employees

OSHA Instruction CPL 2.47
August 17, 1981
Office of the Assistant Secretary

APPENDIX

U.S. Department of Labor

Assistant Secretary for
Occupational Safety and Health
Washington, D.C. 20210

MEMORANDUM FOR: ALL OSHA COMPLIANCE OFFICERS

FROM: TGA THORNE G. AUCHTER
Assistant Secretary

SUBJECT: Compliance Officer Professionalism

Since coming to OSHA, I have been impressed with the extraordinary degree to which this agency is dependent on the caliber of its compliance officers for our public image. This is true, not only with respect to the quality of our inspections, but with respect to the way we are perceived by the public. For most employers and employees, you are the only contact they'll ever have with OSHA. To them, you are the personification of OSHA. Our ability to build cooperative rather than adversarial relationships in the interest of workplace health and safety depends in large part on you. I want to assure you that with very few exceptions I have been tremendously impressed with both the performance and quality of our compliance staff. Your dedication and professional conduct is, with rare exception, exemplary and indicative of your sincere commitment to occupational safety and health.

Therefore, the following policy instructions represent nothing new but rather are reiterated so as to ensure that you understand my personal commitment and interest. I am sending these same guidelines to state plan designees for their dissemination to state compliance safety and health professionals. I expect their conduct to parallel yours since the great majority of the public makes no distinction between state and federal programs.

PREPARE FOR YOUR ASSIGNMENT:

The most important time spent in your professional activity is that devoted to preparing for an inspection. Having been assigned by your supervisor to conduct a particular inspection, you should assume that you have been chosen for that particular job based on training and experience that suit you for the particular inspection that is to be conducted. First, review beforehand the types of conditions you are likely to encounter. If you are not completely familiar with the type of work being done in the plant or site you are going to visit, do research to learn about the processes and types of equipment and machinery you are likely to encounter. Consult available literature or speak to colleagues familiar with the problems of the industry you are to visit. Second, bear in mind that you are judged by employer and employees alike on your familiarity with their work and associated problems. If you spend on-site time familiarizing yourself with topics you should have known of in advance, you, and OSHA by extension, will be resented. Also, ensure that you have with you all equipment and other items you need before you leave for an inspection. Test your equipment to be sure it is working properly.

MAKE A GOOD FIRST IMPRESSION:

The most lasting impression you make will be the first impression you make. Plan the opening conference carefully. Your dress should be appropriate to the type of work you will be inspecting. You should wear and use the same protective clothing and equipment as company employees.

During the opening conference, one of the important things to keep in mind is how the employer and employee representatives may feel about your visit. Your presence may be resented as an intrusion into the work process and a hindrance to production; so be prepared and conduct yourself accordingly. Be precise in your explanation to top management as to why you are there (e.g., complaint, general schedule-explain how the company was selected, accident investigation, special emphasis, etc.), and explain your role, the role of management and of employees or their representatives, and what the entire inspection process will entail. Employers and employees will expect you to use their time (and your time) wisely. Be sensitive to how you are viewed by all with whom you come in contact. Dress according to the circumstances of the particular situation. You are a professional whose experience and expertise should provide the employer with tangible evidence that OSHA's main concern is recognition and reduction or elimination of workplace hazards - not simply enforcement for enforcement's sake.

BE A SALESPERSON FOR SAFETY:

During your walkaround, encourage dialogue and questions and offer suggestions and explanations as to how the problem might be abated. While you can't do engineering studies for the employer, you can certainly offer suggestions, for example, as to how a safety device might be installed or what type of device might be necessary. Remember, your goal is to foster a mutual interest of labor and management in reducing or eliminating hazards. Therefore, always emphasize the safety or health aspects of what you are noting - not simply the fact there may be a violation. Emphasize positive findings. Commend, where appropriate, positive findings and encourage building on desirable factors to strengthen existing programs. Be an enthusiastic booster and promoter of good health and safety practices.

REMAIN PROFESSIONAL:

The most carefully devised policies, the highest quality programs, the best developed standard - all these things have little significance if you - the "out-front" people in the field - appear to those we serve as anything less than a complete professional. You are a safety and health professional who must be aware at all times that you are being judged by those you serve. You are OSHA!

BE BALANCED IN APPROACH:

Once the decision has been reached to inspect an establishment, it is OSHA policy to proceed in a courteous, co-operative, non-adversarial, manner. It's easy over a period of time to become very knowledgeable of certain standards while others remain less familiar. Don't fall into the trap of only enforcing certain "favorite" standards. Health, safety and equity demand that you be evenhanded in the inspection process. Input your knowledge to the employer and employees.

BE NEUTRAL IN YOUR APPROACH:

Stay neutral as you deal with management and labor in doing your job. You are not an agent of "management", nor are you an agent of "labor". You are the agent of OSHA, and charged by the Congress "To assure so far as possible every working man and woman in the nation safe and healthful working conditions and to preserve our human resources". When you are perceived to have bias towards either management or labor, you contribute to an adversarial atmosphere and thereby lessen our ability to bring health and safety to the workplace - avoid even the appearance of partiality.

BE THOROUGH - FOLLOW-UP:

Use the closing conference as a means of reinforcing all you have said earlier about the importance of safety and health, and the cost - effectiveness of good programs. Explain more fully the availability of other OSHA programs - equally as important as enforcement - such as consultation and training.

Emphasize that your inspection is only a part of an overall safety and health program. Explain that OSHA provides other tools for improving safety and health. We offer consultation and training and education through grant programs. Explain who the grantee organizations are in your geographical area and what services they can offer to the employer and employees.

Fully explain any possible future actions such as an industrial hygiene referral so that there will be no surprises for the employer (and no negative attitudes to confront the industrial hygienist who may have to come in later). Make certain the employer knows all the details about what will follow and his or her right to contest your findings when they are finalized by your Area Director. Explain fully the availability of the Area Director and Regional Administrator for informal conferences to discuss settlements and modifications of the abatement plans. Take positive steps to assure there are no questions before you leave. If you leave the employer or employees with unanswered questions, they will build into resentment and counter the effectiveness of all else you have done. Finally, if you promise follow-up or additional communications, be prompt in keeping your promises.

I WANT YOUR IDEAS:

If you have thoughts or suggestions on how we can do a better job of promoting good health and safety practices in the workplace, I'd like to have your suggestions submitted to me through your Area Directors and Regional Administrators.